



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-07534

Dear Ms. Byles:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 349323 (FW PIR No. 3343-09).

The City of Fort Worth (the "city") received a request for information pertaining to a specified address. You state that you will release most of the requested information. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code and privileged under rule 508 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978)*. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *See Open Records*

Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

You state the information you have marked identifies a citizen who reported violations of the city code to city staff members charged with enforcement of the code. You also inform us violations of the code are punishable by civil and criminal penalties. Based on your representations, we conclude the city may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.¹

You claim the submitted information includes an e-mail address that is subject to section 552.137 of the Government Code, which excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address in the submitted information is not specifically excluded by section 552.137(c). As such, this e-mail address, which you have marked, must be withheld under section 552.137, unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b).

In summary, the city must withhold the marked information under section 552.101 in conjunction with the common-law informer's privilege. The marked e-mail address must be withheld under section 552.137, unless the owner of the address has affirmatively consented to its release. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

¹As we are able to make this determination, we need not address your remaining claim against disclosure of this information.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink that reads "Paige Savoie". The signature is written in a cursive, slightly slanted style.

Paige Savoie
Assistant Attorney General
Open Records Division

PS/eb

Ref: ID# 349323

Enc. Submitted documents

cc: Requestor
(w/o enclosures)