



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2009

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

OR2009-08609

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# 346704 (Fort Worth Public Information Request No. 2871-09).

The City of Fort Worth (the "city") received a request for information pertaining to code complaints at a specified address. You state the city is releasing some of the requested information. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code and Texas Rules of Evidence 508. 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. This section encompasses the doctrine of common-law privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find that the city has failed to demonstrate how the information it has marked is highly intimate or embarrassing and not of legitimate public interest.

Therefore, the city may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses 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 that the submitted information identifies citizens who reported violations of the city code, including section 7-93(e), to city staff members charged with enforcement of the code. You also inform us that violations of the code are punishable a fine of up to \$2,000.00 per violation, per day. We note that the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. Thus, the informer's privilege is inapplicable to the identity of the requestor, who is both the subject of the complaints and one of the informants. Accordingly, the city may withhold the information we have marked, which identifies informants who are unknown to the requestor, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.¹ *See Open Records Decision No. 156 (1977) (name of person who makes complaint about another individual to city's animal control division is excepted from disclosure by informer's privilege so long as information furnished discloses potential violation of state law)*. The remaining information you have marked is either the identifying information of the requestor or does not consist of the identifying information of an informer. Thus, the remaining information may not be withheld under section 552.101 on the basis of the informer's privilege. As no further exceptions have been raised, 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.

¹As we are able to make this determination, we need not address your claim under Texas Rule of Evidence 508.

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

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 346704

Enc. Submitted documents

c: Requestor
(w/o enclosures)