



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 28, 2009

Ms. Lisa N. Nieman
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2009-10407

Dear Ms. Nieman:

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# 350349 (DSHS File No. 015299-2009).

The Texas Department of State Health Services (the "department") received a request for information pertaining to a specified inspection report. You state that you will release some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim 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. Section 552.101 encompasses the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects from disclosure 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. Open Records Decision Nos. 515 at 3 (1988), 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." 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. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You state that the submitted information contains identifying information of a person who reported possible violations of various specific sections of chapter 229 of title 25 of the Texas Administrative Code to the department. *See* 25 T.A.C. §§ 229.401- .413. You inform us that violations of these provisions are punishable by civil and criminal penalties. Based on your representations, we conclude that the department may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, because we find that a post office box number does not tend to disclose a person's identity, we conclude that the department may not withhold the individual's post office box number under section 552.101 of the Government Code in conjunction with the common-law informer's privilege

Section 552.130 of the Government Code excepts from disclosure information that "relates to ... a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. Accordingly, the department must withhold the marked Texas motor vehicle record information under section 552.130 of the Government Code.

In summary, the department may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The department must withhold the information marked under section 552.130 of the Government Code. 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 information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 350349

Enc. Submitted documents

cc: Requestor
(w/o enclosures)