



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 19, 2009

Mr. Steven M. Kean  
Deputy City Attorney  
City of Tyler  
P.O. Box 2039  
Tyler, Texas 75710

OR2009-11660

Dear Mr. Kean:

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# 354456 (Tyler PRF-591772).

The City of Tyler (the "city") received three requests from the same requestor for information regarding complaints made during a specified time period relating to the clearing of land at a specified address. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered the requestor's comments. *See* Gov't Code § 552.304 (interested party may submit written comments concerning disclosure of requested information).

Section 552.101 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 information protected by the 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). 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

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<sup>1</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

No. 279 at 1-2 (1981). However, the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the content of the communication only to the extent that it identifies the informant. *See* Open Records Decision No. 549 at 5 (1990).

You state that the submitted information is related to complaints of alleged violations of sections 6-123.j and 18-20 of the Tyler City Code. You explain that various city employees have authority to enforce these ordinances under section 18-4 of the Tyler City Code. You indicate that the complainants reported the violations to the city departments responsible for enforcing these ordinances. You state that there are criminal penalties for violations of these ordinances under section 1-4 of the Tyler City Code. Based on your representations and our review of the submitted information, we conclude that the department may withhold some of the information you have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. However, you have failed to explain how a portion of the submitted information you have marked identifies or tends to identify a complainant. *See* Open Records Decision No. 549 at 5 (1990). Furthermore, the requestor's comments indicate that the subject of the complaint knows the identity of one of the complainants; therefore, the identity of that complainant may not be withheld on the basis of the informer's privilege. *See* Open Records Decision No. 208 at 1-2 (1978). We have marked the information that may be withheld under section 552.101 of the Government Code in conjunction with the informer's privilege. The remaining information must be released to the requestor.

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](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,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/dls

Ref: ID# 354456

Enc. Submitted documents

c: Requestor  
(w/o enclosures)