



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2010

Ms. Leticia Garza
City Clerk
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR2010-00650

Dear Ms. Garza:

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# 367126.

The City of Baytown (the "city") received a request for information pertaining to a specified complaint against the requestor's property.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.137 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. 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 (1988), 208 at 1-2*

¹We note that the requestor clarified his request. *See* Gov't Code § 522.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

(1978). The 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. 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 release of the requested information "would interfere with the [c]ity's ability and position to investigate and enforce statutes related to [city building codes]." However, you have not identified any violation, nor have you explained whether the violation carries civil or criminal penalties. Accordingly, the city has failed to demonstrate that the informer's privilege is applicable to the submitted information. Consequently, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the informer's privilege.

Section 552.137 of the Government Code 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), (b). The e-mail address at issue is not of a type specifically excluded by section 552.137(c). *See id.* § 552.137(c). Therefore, the city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address consents to its release.² 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, 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

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 367126

Enc. Submitted documents

c: Requestor
(w/o enclosures)