



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 9, 2010

Ms. Cary Grace
Assistant City Attorney
City of Austin, City Hall
P.O. Box 1088
Austin, Texas 78767

OR2010-03367

Dear Ms. Grace:

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#376132.

The City of Austin (the "city") received a request for all complaints received concerning allegations of code violations at a specified address from March 2006 to January 10, 2010. You claim that a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested 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 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 have marked the information for which the city claims the informer's privilege. You state that the marked information identifies an individual who reported possible violations of the city's code of ordinances. You also state that the possible violations were reported to the city's Code Enforcement Department, which is charged with enforcing the code. You indicate that a violation of the code provision concerned is punishable by a criminal penalty. Based on your representations and our review of the information at issue, we conclude that the city may withhold the marked information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must release the rest of the submitted information.

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, toll free at (888) 672-6787.

Sincerely,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/jb

Ref: ID#376132

Enc. Submitted documents

c: Requestor
(w/o enclosures)