



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 10, 2010

Ms. Cary Grace  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2010-03448

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# 372462.

The City of Austin (the "city") received a request for all information related to the identity of the person or persons who reported a specified violation at a specified location. 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. Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 information protected by 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).<sup>1</sup> The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided 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). 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.

You state the identifying information you have highlighted within the submitted information is protected under the informer's privilege because it reveals the identity of an individual who filed a complaint with the city regarding a possible violation of the Austin City Code. You indicate the complaint was filed with the city's Code Compliance Department (the "department") and that the department has the authority to enforce the section of the code at issue. You state the reported violation is a Class C misdemeanor punishable by a fine. You do not indicate, nor does it appear, the subject of the complaint knows the identity of the complainant. The requestor, however, asserts the informer's privilege is not applicable because the individual whose information is at issue is identified as a complainant rather than an informer. In addition, the requestor claims the informer's privilege does not apply because the reported violation is not a violation of state law. We note the informer's privilege protects the identities of individuals who report violations of statutes with criminal or civil penalties. See ORD Nos. 582 at 2, 515 at 4-5. There is no requirement that the governmental body asserting the informer's privilege label the individual an "informer" or that the violation at issue be of state law. See ORD 279 at 2 (identity of complainant who reported zoning ordinance violation excepted under informer's privilege). Thus, based on the city's representations and our review, we conclude the city may withhold the complainant's name, address, and telephone number, which the city has highlighted, under section 552.101 of the Government Code in conjunction with the common-law 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.

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<sup>1</sup>We note that the requestor asserts that section 552.101 is inapplicable in this instance. However, as noted, section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Also as noted, the common-law informer's privilege has long been recognized by Texas courts. Accordingly, we find that the informer's privilege makes information confidential by law according to judicial decision, and therefore makes information confidential for purposes of section 552.101.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Burnett". The signature is fluid and cursive, with the first name being more prominent.

Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 372462

Enc. Submitted documents

c: Requestor  
(w/o enclosures)