



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 7, 2010

Mr. Tyler Wallach  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2010-06618

Dear Mr. Wallach:

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# 378513 (Fort Worth PIR No. 2433-10).

The Fort Worth Fire Department (the "department") received a request for information concerning fire or life safety code violations at specified properties. You state that you are releasing most of the requested information. 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 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 Texas courts have long recognized. *See, e.g., 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 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. *See* Open Records Decision No. 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 1-2 (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 (1988). However, witnesses who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer’s privilege. 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 portions of the submitted information reveal the identity of persons who reported alleged violations of Fort Worth’s Municipal Code to Fort Worth’s Code Compliance division, which has authority to enforce the code section at issue. You also provide documentation showing that violations of this code section carry civil penalties. We agree that the information we have marked tends to identify the persons who reported the alleged violations. Thus, the department may withhold this information under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, you have not established that the remaining information you have marked under the common-law informer’s privilege identifies an informer; therefore, the department may not withhold any of the remaining information on the basis of this exception.

You argue that the remaining information you marked under the informer’s privilege is confidential pursuant to common-law privacy and “special circumstances.” However, the Third Court of Appeals recently ruled that the “special circumstances” exception found in past Attorney General Open Records Decisions directly conflicts with Texas Supreme Court precedent regarding common-law privacy. *Tex. Dep’t of Pub. Safety v. Cox Tex. Newspapers, L.P. and Hearst Newspapers, L.L.C.*, 287 S.W.3d 390 (Tex. App.—Austin 2009, pet. filed). The court of appeals ruled that the two-part test set out in *Industrial Foundation* is the “sole criteria” for determining whether information may be withheld under common-law privacy. *Id.*; see also *Indus. Found.*, 540 S.W.2d at 686. Upon review, we find that the remaining information for which you assert “special circumstances” is not intimate or embarrassing. See ORD 455 at 7 (birth dates, names, and addresses are not protected by privacy). As you have failed to meet the first prong of the *Industrial Foundation* test for privacy, we find that the remaining information for which you assert “special circumstances” is not confidential under common-law privacy, and the department may not withhold this information on that basis. As you raise no additional exceptions, 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](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 cursive script that reads "Jonathan Miles".

Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/jb

Ref: ID# 378513

Enc. Submitted documents

c: Requestor  
(w/o enclosures)