



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2010

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2010-12100

Dear Ms. Graham:

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# 389851.

The City of Mesquite (the "city") received a request for city records regarding the code inspection of a particular property, copies of neighbor complaints involving the property, and copies of city reports regarding the property made by two named individuals from 2005 to 2010. You indicate the city has released some information. You claim 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 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 (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.

You have marked the information the city seeks to withhold under the informer’s privilege. You state the marked information identifies an informant who reported a violation of sections 10-166 and 9-187 of the city’s Code of Ordinances to the Code Enforcement Department (the “department”). You state the reported alleged violations are within the purview of the department’s enforcement authority. We understand the alleged violations carry administrative and civil penalties. Based on your representations and our review of the submitted information, we find it involves reports of violations of a law made to officials with the duty of enforcing that law. Thus, we find the city may withhold the information we marked under section 552.101 in conjunction with the common-law informer’s privilege. However, we find the remaining information you marked does not identify the informer. Therefore, none of the remaining information may be withheld under section 552.101 in conjunction with the common-law informer’s privilege.

You also argue the marked e-mail address is excepted under section 552.137 of the Government Code. Section 552.137 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)-(c). The e-mail address you marked does not appear to be of a type specifically excluded by section 552.137(c). Thus, we agree the city must withhold the e-mail address you marked under section 552.137, unless its owner affirmatively consented to its release.¹ *See id.* § 552.137(b).

In summary, the city may withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. The city must withhold the e-mail address you marked under section 552.137 of the Government Code. The city must release the remaining 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.

¹We 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.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 389851

Enc. Submitted documents

c: Requestor
(w/o enclosures)