



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2010

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
For Town of Flower Mound
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2010-13223

Dear Mr. Griffith:

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# 391920.

The Town of Flower Mound (the "town"), which you represent, received a request for a copy of a specified complaint. You claim 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.

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). 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. We also note that the privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. *See* Open Records Decision No. 549 at 5 (1990). We note the informer's privilege

does not protect the identity of a corporation that reports a violation of the law, as a corporation is not an individual. *See Roviario v. United States*, 353 U.S. 53, 59 (1957), Open Records Decision No. 515 at 2 (1988).

You state the submitted information contains the identifying information of an individual who reported a possible violation of section 86 of the town's Code of Ordinances to the town's code enforcement department, which is responsible for enforcing such violations. You also inform us that a violation of section 86 is subject to a criminal penalty. Based on your representations and our review of the submitted information, we conclude the town has demonstrated the applicability of the common-law informer's privilege to the information we have marked. Accordingly, the town may withhold this information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. We find the remaining information does not constitute identifying information of an informer for purposes of the common-law informer's privilege. Therefore, the town may not withhold any of the remaining information under section 552.101 on the basis of the informer's privilege, and it 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 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,



James McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 391920

Enc. Submitted documents

c: Requestor
(w/o enclosures)