ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2010

Mr. Warren M. S. Ernst
Chief of the General Counsel Division
Office of the City Attorney
City of Dallas
1500 Marilla Room 7BN
Dallas, Texas 75201

OR2010-14233

Dear Mr. Ernst:

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# 398672.

The City of Dallas (the "city") received a request for records of health violations and complaints involving a specified restaurant. You state that some of the requested information either has been or will be released. You claim that the rest of the requested information is excepted from disclosure under section 552.101 of the Government Code and privileged under Texas Rule of Evidence 508. We have considered your arguments and reviewed the information you submitted.[1]

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

[1]This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

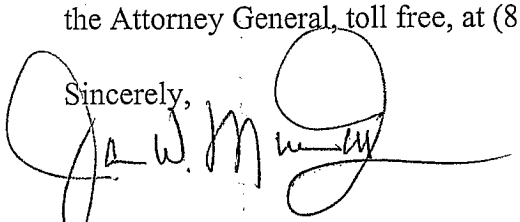
at 1-2 (1978). The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law 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 the city seeks to withhold under the common-law informer's privilege. You state that the marked information identifies an informant who reported a violation of section 229.164 of title 25 of the Texas Administrative Code to the city's Code Compliance Department. You explain that the department is responsible for enforcing section 229.164. You state that a violation of section 229.164 is a misdemeanor punishable by a fine. Based on your representations, we agree that the city may withhold the informer's name, address, e-mail address, and mobile telephone number under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. We conclude that the remaining marked information may not be withheld on this basis and must be released.[2]

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 W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

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[2]As we are able to make this determination, we need not address your other arguments against disclosure.

Ref: ID# 398672

Enc: Submitted document

c: Requestor
(w/o enclosures)