ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2010

Mr. Peter Scott
Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2010-14390

Dear Mr. Scott:

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# 394480 (City ID# 223).

The City of Wichita Falls (the "city") received a request for the names of the individuals who made complaints to the city's code enforcement department regarding the requestor and his property. 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.

Initially, we note the request seeks only the names of the individuals who made complaints against the requestor and his property. You have submitted information beyond the complainants' names and information that relates to complaints against other individuals and properties. Thus, this additional information is not responsive to this request. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release that information in response to the request.

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 (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. 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 state that the individuals at issue reported possible violations of the city's building code to the city's code enforcement department. You inform us that the code enforcement department is a law enforcement division charged with conducting investigations and issuing citations for code violations, which carry criminal penalties. Based on your representations, we conclude the city may withhold the names of the individuals at issue under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

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,

Kate Hartfield

Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 394480

Enc. Submitted documents

c: Requestor
(w/o enclosures)