



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 13, 2010

Ms. Cynthia Villarreal-Reyna  
Section Chief - Agency Counsel  
Legal & Regulatory Affairs MC 110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2010-15600

Dear Ms. Villarreal-Reyna:

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# 396783 (TDI Nos. 106882 and 107289).

The Texas Department of Insurance (the "department") received two requests from the same requestor for four categories of information related to a named individual and Champion Contractors and Services, L.L.C. ("Champion"), including the identity of the complainant. You claim some of the requested information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the requested information may implicate the proprietary interests of Champion. Accordingly, you have notified Champion of the request and its right to submit arguments to this office as to why the requested information should not be released to the requestor. *See Gov't Code § 552.305(d)*. 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 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 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 state the submitted information contains a complaint made to the department, which has the authority to act and investigate the allegations expressed in the complaint. We note the submitted complaint alleges a violation of the state's laws on unauthorized insurance, which carry both civil and criminal penalties.<sup>1</sup> Based on your representations and our review of the information at issue, we conclude the department may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to it should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received correspondence from Champion. Thus, Champion has not demonstrated it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3. Accordingly, the department may not withhold any of the remaining information based on Champion's proprietary interests.

In summary, the department may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. 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.

---

<sup>1</sup>We note unauthorized insurance includes civil penalties and a criminal penalty of a felony of the third degree. *See* Ins. Code §§ 101.105, .106.

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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/dls

Ref: ID# 397783

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Tim Wilson  
Champion Contractors & Services  
17545 Kuykendahl, Suite D  
Spring, Texas 77379  
(w/o enclosures)