



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 4, 2010

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

OR2010-16739

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# 399108.

The City of Dallas (the "city") received a request for documents, applications, correspondence, surveys, and contracts related to the application for and issuance of a Certificate of Occupancy for a specified address. You state the city will release some of the requested information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention the city did not comply with the procedural requirements of the Act in requesting our decision because the city did not submit any responsive information for our review. The requestor indicates the city failed to comply with section 552.301(e)(1)(D), which states a governmental body must submit no later than the

¹Although you also claim the informer's privilege under Texas Rule of Evidence 508 in this instance, we note that section 552.101 in conjunction with common-law informer's privilege is the correct exceptions for the substance of your argument.

fifteenth business day after the date of receiving the written request “a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]” *Id.* § 552.301(e)(1)(D). However, prior to the city’s fifteen-business-day deadline, the city submitted information responsive to the request to our office for review. The city states the submitted information is a representative sample of the requested information. Thus, contrary to the requestor’s assertion, we find the city complied with section 552.301(e)(1)(D). We assume, however, the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. This section 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); *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. However, the informer’s privilege protects the content of the communication only to the extent it identifies the informant. *Roviaro v. United States*, 353 U.S. 53, 60 (1957).

You state you have marked information within the submitted complaints that identifies an individual who reported possible violations of city ordinances to the city’s Department of Sustainable Development and Construction, which you state has the authority to enforce the violations at issue. You state, and provide supporting documentation showing, that violations of the ordinance provisions at issue are punishable by fines. Based on your representations, we conclude the city may withhold the complainant-identifying 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.

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,

A handwritten signature in black ink, appearing to read 'Tamara Wilcox', written in a cursive style.

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 399108

Enc. Submitted documents

c: Requestor
(w/o enclosures)