



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 9, 2010

Ms. Lisa M. Nieman  
Assistant General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2010-17010

Dear Ms. Nieman:

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# 400356 (DSHS# 17905-2010).

The Texas Department of State Health Services (the "department") received a request for the name of the individual or organization that filed a specified complaint against the requestor. You claim a portion of 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 requestor seeks only the name of the individual or organization who filed a specified complaint against the requestor. You have submitted a document that contains information beyond the name of the individual or organization. Thus, the portions of the submitted document that do not contain the name of the individual or organization are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request and the department 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

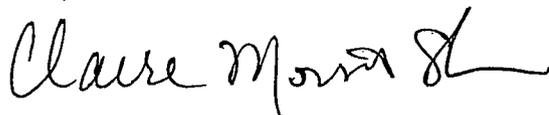
S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 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 1-2 (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 (1988).

You state the portion of the responsive information you have marked identifies a complainant who reported possible violations of the Texas Food, Drug, and Cosmetic Act to the department. *See generally* Health & Safety Code ch. 431. You explain the department is charged with investigating potential violations of the Texas Food, Drug, and Cosmetic Act. You also state violations of the Texas Food, Drug, and Cosmetic Act are punishable by civil and criminal penalties. *Id.* §§ 431.0585, .059(a). Based upon your representations and our review, we conclude the department has demonstrated the applicability of the common-law informer's privilege to the responsive information. Therefore, the department may withhold the name of the complainant, which you have marked, pursuant to 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/tp

Ref: ID# 400356

Enc. Submitted documents

c: Requestor  
(w/o enclosures)