



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2010

Mr. B. Chase Griffith
Brown & Hoffmeister, L.L.P
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2010-18841

Dear Mr. Griffith:

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# 403844 (ORR# 10-2888).

The City of McKinney (the "city"), which you represent, received a request for the exact time the city received a specified complaint and the name of the complainant. 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 a portion of the submitted information is not responsive to the present request because it does not consist of the time the city received the specified complaint and the name of the complainant. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release non-responsive 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 information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *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) (citing 8 John H. Wigmore, *Evidence in Trials at Common law*, § 2374, at 767 (J. McNoughton 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.

You claim the submitted information contains identifying information of a person who reported a possible violation of section 26-12 of the city's Code of Ordinances to the city's Animal Services Department, which is the department responsible for enforcing this ordinance. You state this alleged violation carries a criminal penalty. Upon review, we find the city may withhold the name of the complainant under section 552.101 based on the informer's privilege. However, the time the city received the specified complaint does not constitute identifying information. Therefore, the city may not withhold this information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. As you raise no other exception to disclosure, the city must release this information to the requestor.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 403844

Enc. Submitted documents

c: Requestor
(w/o enclosures)