



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2011

Ms. Molly Shortall
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004

OR2011-01512

Dear Ms. Shortall:

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# 407485.

The City of Arlington (the "city") received two requests from the same requestor for all complaints and reports filed against the requestor's address. You state the city has released a redacted copy of the submitted information to the requestor. You claim the information you marked is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

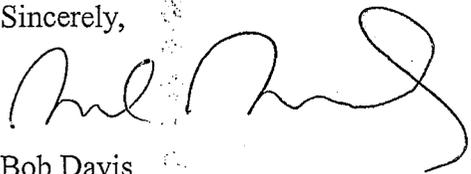
Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It 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. 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. 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. However, individuals who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer's privilege. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You state the submitted information identifies complainants who reported possible violations of the law to city staff members charged with enforcement of the violations at issue. You also provide documentation reflecting the reported violations are misdemeanors punishable by fines. The submitted information does not indicate the individual accused of the violations knows the identity of the complainants. Upon review, we marked the identifying information of the individuals who reported the violations to the city. Although you also marked identifying information of witnesses, the informer's privilege protects only the identity of individuals who are identified as having actually reported a violation. In the submitted documents, the witnesses are listed separately from the individuals identified as reporting the violations. Consequently, witness identities may not be withheld under section 552.101 in conjunction with the informer's privilege in this instance. Accordingly, the city may only withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. As you raise no other exceptions to disclosure, 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 407485

Enc. Submitted documents

c: Requestor
(w/o enclosures)