



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2011

Mr. Warren Ernst
Chief of General Counsel Division
City of Dallas
1500 Marilla, Room 7DN
Dallas, Texas 75201

OR2011-05779

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# 420430.

The City of Dallas (the "city") received a request for information pertaining to complaints and reports pertaining to a specified address. You claim some of the requested 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 information.²

Section 552.101 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 information protected by the 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). 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.

¹While you also raise section 552.101 in conjunction with Texas Rule of Evidence 508 for your informer's privilege argument, we only address your claim under the common-law informer's privilege as this office has concluded that section 552.101 does not encompass discovery privileges. *See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).*

²We assume 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 those records contain substantially different types of information than that submitted to this office.

See Open Records Decision Nos. 515 at 3 (1998), 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 (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 *Roviaro v. United States*, 353 U.S. 53, 60 (1957); Open Records Decision No. 549 at 5 (1990).

You inform us the submitted information consists of a report of alleged violations of the Dallas Fire Code. You state this report was made to the city's Fire-Rescue Department that is responsible for enforcing the laws at issue, and such violations are class "C" misdemeanors with possible fines of up to \$2,000. Based on your representations and our review of the submitted information, we conclude the city may withhold the information you have marked, except as we have marked for release, under section 552.101 of the Government Code in conjunction with the informer's privilege. The remaining submitted information must be released 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,



Paige Lay
Assistant Attorney General
Open Records Division

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Enc. Submitted documents

cc: Requestor
(w/o enclosures)