



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2011

Ms. Karen Stead
Assistant City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR2011-10726

Dear Ms. Stead:

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# 425053 (City's File No. YYI-789920).

The City of Tyler (the "city") received a request for information pertaining to case number 11-00023385. You state some information has been released 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 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. 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); *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

¹You also claim the informer's privilege under Texas Rule of Evidence 508. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); Gov't Code § 552.022(a). In this instance, however, section 552.022 is not applicable to the information that you seek to withhold under the informer's privilege, and therefore, we do not address your argument under rule 508.

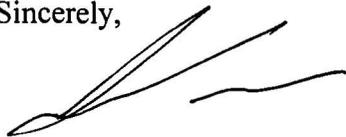
report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 2 (1981). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5.

You have marked portions of the submitted information which you contend reveals the identity of an individual who reported a possible criminal violation to the city’s Code Enforcement Department (the “department”). We note, however, this information pertains to a report made by the director of the city’s Solid Waste Department. You state the city’s code provides “the [d]irector of Solid Waste, [department] officers, [p]eace [o]fficers, and [p]ublic [s]ervice officers of the [city’s police department] and other [c]ity employees are . . . authorized to enforce [city] ordinances,” such as the one at issue here, “and to issue municipal court citations for violations of those ordinances.” Thus, the informer at issue had a duty to report the violation at issue. The purpose of the informer’s privilege is to encourage “citizens” to report wrongful behavior to the appropriate officials. See *Roviaro v. United States*, 353 U.S. 53, 59 (1957). The privilege is not intended to protect the identities of public officials and employees who have a duty to report violations of the law. Cf. *United States v. St. Regis Paper Co.*, 328 F. Supp. 660, 665 (W.D. Wis. 1971) (concluding that public officer may not claim informer’s reward for service it is his or her official duty to perform). Thus, we find you have failed to demonstrate the informer’s privilege is applicable to the information you marked and may it not be withheld under section 552.101 on that basis. As you raise no other exceptions against disclosure of the submitted information, it 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 423053

Enc. Submitted documents

c: Requestor
(w/o enclosures)