



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 3, 2011

Mr. Jesse Blakley, Jr.  
Assistant District Attorney  
Brazoria County Criminal District Attorney's Office  
111 East Locust, Suite 408A  
Angleton, Texas 77515

OR2011-11188

Dear Mr. Blakley:

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# 426343.

The Brazoria County Environmental Health Department (the "county") received a request for complaints to abate public nuisances. 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses 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); *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.

Open Records Decision No. 515 at 3 (1988). 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). However, the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. See Open Records Decision No. 208 at 1-2 (1978).

You claim the submitted information contains identifying information of persons who reported possible violations of chapter 343 of the Health and Safety Code. See Health & Safety Code ch. 343 (concerning abatement of public nuisances). You inform us chapter 343 authorizes the county to seek injunctions or criminal penalties against violators. See *id.* §§ 343.012 (making public nuisance under Health & Safety § 343.011(b) a misdemeanor), .013 (permitting county to bring suit for injunction to remedy violation of chapter 343). We note section 343.012 provides an offense under section 343.012 is a misdemeanor punishable by a fine or, in certain circumstances, confinement in jail, or both a fine and confinement. *Id.* § 343.012(b),(c). You do not inform us any of the complainants' identities are known to the individuals who are the subjects of the respective complaints. Therefore, based on your representations and our review, we conclude the county has demonstrated the applicability of the common-law informer's privilege to the portion of the submitted information that identifies the complainants. Therefore, the county may withhold the names, addresses, and telephone numbers of the complainants 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 county must release the remaining information.

Finally, you ask this office to issue a previous determination that would permit the county to withhold information that would identify complainants in public nuisance complaint records without the necessity of again requesting an attorney general decision under the Act. See Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). We decline to do so at this time. Accordingly, 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,

A handwritten signature in black ink, appearing to read "Mack T. Harrison". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 426343

Enc. Submitted documents

c: Requestor  
(w/o enclosures)