



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 2, 2011

Ms. Elaine Nicholson  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2011-12790

Dear Ms. Nicholson:

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# 431690.

The City of Austin (the "city") received a request for any information pertaining to a specified complaint. The city has redacted an email address in accordance with the previous determination issued in Open Records Decision No. 684 (2009).<sup>1</sup> You claim that a portion of the remaining 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.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the informer's privilege, which has long been recognized by Texas courts. *E.g., 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 that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208

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<sup>1</sup> Open Records Decision No. 684 is a previous determination issued by this office to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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).

You state the submitted information contains identifying information of a complainant who reported a possible violation of sections 6-4-63 and 6-4-64 of the city's Code of Ordinances, which provides for a fine of up to \$2000, and the complaint was made to the City's Water Utility, which is the department charged with enforcing the provisions of these sections. Having examined these provisions, your arguments, and the documents at issue, we conclude the city may withhold the information identifying the complainant, which you have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must release the remaining information.

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,



Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/sdk

Ref: ID# 431690

Enc. Submitted documents

c: Requestor  
(w/o enclosures)