



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2011

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-15005

Dear Ms. Evans:

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# 433168 (GC No. 18809).

The City of Houston (the "city") received a request for (1) 3-1-1 call records from a specified address during a specified time period and (2) 3-1-1 call records from a named individual during a specified time period. You state the city has or will make available information related to the first category of the request. You claim the remaining requested information is excepted from disclosure pursuant to 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 from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception 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. 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 assert the submitted information should be withheld under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. You state this information relates to 3-1-1 reports of violations of city ordinances that address minimum habitability standards for multi-family rental buildings. You inform us such 3-1-1 calls are routed to the Houston Police Department's Neighborhood Protection Corps, the agency charged with enforcing ordinances pertaining to multi-family building habitability standards. You further state a violation of the habitability standards is punishable by criminal citation. There is no indication the subject of the complaints knows the identity of the complainant. Based on your representations and our review, we conclude the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, the remaining information does not contain identifying information of the informer. Thus, we conclude the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the informer's privilege. As you raise no further 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,

A handwritten signature in cursive script, appearing to read "Jennifer Burnett", followed by a horizontal line extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 433168

Enc. Submitted documents

c: Requestor
(w/o enclosures)