



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2011

Ms. Candice M. Gambrell
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-16287

Dear Ms. Gambrell:

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# 435431 (GC# 18872).

The City of Houston (the "city") received a request for information related to a specified complaint. You claim that 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.

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. Section 552.101 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). 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. *See Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978)*. The 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." *See Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, Evidence in Trials at Common Law, § 2374, at 767 (J. 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* Open Records Decision No. 549 at 5 (1990).

You state that, pursuant to City of Houston Executive Order 1-39 (Revised), the Office of the Inspector General (the "OIG") is a division of the Office of the City Attorney who has the authority to "investigate employee misconduct, including alleged violations of state or federal law, an Executive Order, an Administrative Procedure, or a Mayor's Policy, relating indirectly to employees' duties with the [c]ity." You also state the information at issue identifies an individual who reported alleged violations of the Texas Whistleblower Act to the OIG. We understand that a violation of this ordinance is punishable by criminal penalty. It does not appear the subject of the complaint knows the identity of the informer. Based on your representations and our review, we conclude that 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, we find no portion of the remaining information identifies or tends to identify the complainant. Accordingly, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with the informer's privilege. As no further exceptions are raised, 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 black ink, appearing to read 'Vanessa Burgess', with a long horizontal flourish extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 435431

Enc. Submitted documents

c: Requestor
(w/o enclosures)