



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 8, 2011

Mr. Marc Allen Connelly  
Deputy General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2011-18068

Dear Mr. Connelly:

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# 438655 (DSHS File 19454/2012).

The Texas Department of State Health Services (the "department") received a request for a specified complaint. You state some of the requested information either has been or will be released. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note the requestor specifically seeks access to "complaint #1058 11 0020." Thus, the submitted police report is not responsive to the present request for information. Therefore, this decision does not address your claim for the submitted police report under section 552.108 of the Government Code, and the police report need not be released in response to the present request for information. We will address your claim for the responsive information at issue.

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. You raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *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 the subject of the information does not already know the informer's identity. *See Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978)*. The privilege protects the identities of individuals who report violations of statutes

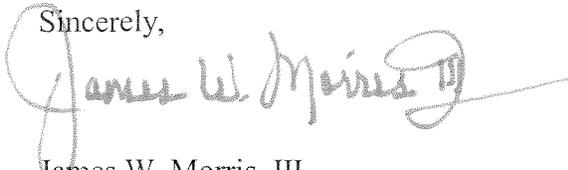
to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” *See* Open Records Decision No. 279 at 2 (1981) (citing 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. 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 indicate the responsive information identifies an informer who reported possible violations of chapter 455 of the Occupations Code and section 140.305 of title 25 of the Texas Administrative Code to the department. *See* Occ. Code §§ 455.001-.353 (regulating the health profession of massage therapy); *see also* 25 T.A.C. § 140.305 (sexual misconduct). You also indicate the department has not disclosed the informer’s identity to the subject of the complaint. We understand the alleged violations are within the scope of the department’s enforcement authority. We also understand the alleged violations carry administrative, civil, and criminal penalties. *See* Occ. Code §§ 455.301-.353; 25 T.A.C § 140.372(d). Based on your representations and our review of the information at issue, we conclude the department may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. Although you also seek to withhold some or all of the remaining information at issue on the basis of the informer’s privilege, we conclude the remaining responsive information does not identify an informer and may not be withheld on that basis under section 552.101. As the department claims no other exception 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](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 dark ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 438655

Enc: Submitted documents

c: Requestor  
(w/o enclosures)