



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2011

Ms. Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR2011-18822

Dear Ms. Hibbs:

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# 439924 (TDA PIR# 12-064).

The Texas Department of Agriculture (the "department") received a request for incident report number 2011-00008525. You state the department has released some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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. You raise section 552.101 in conjunction with the common-law informer's

¹While you also raise section 552.101 in conjunction with Texas Rule of Evidence 508 for your informer's privilege argument, we only address your claim under the common-law informer's privilege as this office has concluded that section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). We further note you also claim the informer's privilege under Texas Rule of Evidence 508. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" for purposes of section 552.022 of the Government Code. See *In re City of Georgetown*, 53 S.W.3d 328 (Tex.2001); see also Gov't Code § 552.022 (a). In this instance, section 552.022 is not applicable to the information you seek to withhold under the informers privilege, and we do not address your argument under rule 508.

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 from disclosure 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 No. 208 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 1-2 (1981)* (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton Rev. Ed. 1961)). However, individuals who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer's privilege. 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 (1988)*.

You state the submitted information is related to a complaint of an alleged violation of this state's structural pest control laws. You explain the department has the authority to enforce these laws under chapter 1951 of the Texas Occupations Code. *See Occ. Code §§ 1951.501, 1951.551, 1951.553*. You indicate the department has the authority to assess administrative penalties for violations of the structural pest control laws. *See Agric. Code §§ 12.020, 12.0201*. Based on your representations and our review of the submitted information, we conclude the department has demonstrated the applicability of the common-law informer's privilege to portions of the submitted information. Accordingly, the department may withhold the complainant's identifying information, which we have marked, under section 552.101 in conjunction with the informer's privilege. However, you have not demonstrated how any portion of the remaining information identifies a complainant; therefore, none of the remaining information may be withheld under section 552.101 in conjunction with the common-law informer's privilege.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983)* (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). The remaining information contains business ownership percentages. This information, which we have marked, is highly intimate or embarrassing and not of

legitimate public concern. Therefore, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department may withhold the complainant's identifying information, which we marked, under section 552.101 in conjunction with the informer's privilege. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 439924

Enc. Submitted documents

c: Requestor
(w/o enclosures)