



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2012

Mr. Rob Atherton
City Attorney
City of Nacogdoches
P.O. Box 631248
Nacogdoches, Texas 75963-1248

OR2012-00677

Dear Mr. Atherton:

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# 442251.

The City of Nacogdoches (the "city") received a request for information related to complaints concerning a specified address. You state some information has been released to the requestor. You claim some of the submitted 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.

Initially, we note some of the submitted information, which we have marked, is not responsive because it does not pertain to the address specified in the present request for information. This ruling does not address the public availability of non-responsive information, nor is the city required to release such information in response to this request.

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 section encompasses 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 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. 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 have marked information the city seeks to withhold on the basis of the informer’s privilege. You explain the marked information identifies an individual who reported alleged violations of the city’s zoning ordinance to city officials charged with the duty of enforcing the ordinance at issue. You inform us a violation of the ordinance at issue is a misdemeanor criminal offense that is punishable by a fine. There is no indication the subject of the complaint knows the identity of the complainant. Based on your representations, 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 responsive 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 responsive 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 442251

Enc. Submitted documents

c: Requestor
(w/o enclosures)