



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 7, 2012

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

OR2012-03428

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# 447278 (DSHS File # 19766).

The Texas Department of State Health Services (the "department") received a request for the original complaints filed against the requestor.<sup>1</sup> You state the department has released or will release some of the requested information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions 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 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. 1938). The 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. Open Records Decision Nos. 515 at 3 (1988), 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

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<sup>1</sup>We note the department received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

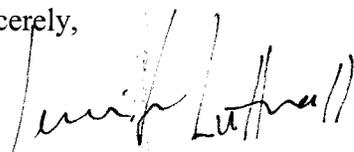
statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, Evidence in Trials at Common Law § 2374, at 767 (J. McNaughton rev. ed. 1961)). 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.

You have marked the information you claim is protected by the informer’s privilege. You state the marked information identifies individuals who reported possible violations under chapter 455 of the Occupations Code. See Occ. Code §§ 455.001-455.353 (regulating the health profession of massage therapy). You also state the information you have marked “relates specifically to enforcement by [the department] of criminal or civil statutes.” We understand the violations at issue are punishable by civil or criminal penalties. See *id.* §§ 455.301-455.353. You state the subject of the complaints does not know the identities of the complainants. Therefore, based on your representations and our review, 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.<sup>2</sup> However, we find the remaining information you have marked does not identify an informer. Accordingly, the department may not withhold any of the remaining information under section 552.101 on the basis of the informer’s privilege. 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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument.

Ref: ID# 447278

Enc. Submitted documents

c: Requestor  
(w/o enclosures)