



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2012

Ms. Cathy Cunningham
Boyle & Lowry, L.L.P.
4201 Wingren, Suite 108
Irving, Texas 75062-2763

OR2012-07759

Dear Ms. Cathy Cunningham:

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# 454358.

The City of Keller (the "city"), which you represent, received a request for all complaints regarding The Boiling Point Tea Party meetings during a specified time period relating to signs or code compliance. You claim portions of the submitted information are 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 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. 1928). 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 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). However, the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's privilege

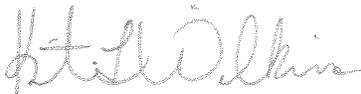
protects the content of the communication only to the extent that it identifies the informant. See Open Records Decision No. 549 at 5 (1990).

You indicate the submitted information is related to complaints of alleged violations of the city code made to the city's Code Compliance Officer. However, you do not state whether any alleged violation would result in a civil or criminal penalty. Accordingly, the city has failed to demonstrate that the informer's privilege applies to the information you have marked. Therefore, the city may not withhold any of the marked 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 submitted 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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 454358

Enc. Submitted documents

c: Requestor
(w/o enclosures)