



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2012

Ms. Elaine Snow
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2012-10482

Dear Ms. Snow:

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# 458818 (DSHS File No. 20228/2012).

The Texas Department of State Health Services (the "department") received a request for complaint number 1060-12-0024. You claim that the some of the submitted information is 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. 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. 1928). 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 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, and the submitted information reveals, the marked information identifies individuals who reported possible violations of chapter 601 of the Occupations Code. You explain the information you have marked related specifically to a complaint received by the department's Medical Radiologic Technologist Certification Program of the Professional Licensing and Certification Unit and that the department is "obligated to investigate alleged violations of misconduct by medical radiologic technologist and enforce compliance" under chapter 601 of the Occupations Code and chapter 140 of title 25 of the Texas Administrative Code, which are punishable by civil or criminal penalties. *See* 25 T.A.C. § 140.514 (disciplinary actions). You further state, and the submitted information reveals, the subject of the complaint does not know the identity of the complainant. Therefore, based on your representations and our review, we conclude the department may withhold the identifying information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. As you raise no further exceptions against 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, 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 458818

Enc. Submitted documents

c: Requestor
(w/o enclosures)