



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2012

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-12262

Dear Ms. Evans:

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# 461045 (GC No. 19716).

The City of Houston (the "city") received a request for complaints pertaining to three named entities operating wrecker services storage lots. You claim portions of the requested information are excepted from disclosure under sections 552.101 and 552.130 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. Section 552.101 encompasses information protected by 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. 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. Additionally, the privilege is not intended to protect the identities of public officials and employees who have a duty to report violations of the law. Because a public employee acts within the scope of his employment when filing a complaint, the informer’s privilege does not protect the public employee’s identity. Cf. *United States v. St. Regis Paper Co.*, 328 F. Supp. 660, 665 (W.D. Wis. 1971) (concluding that public officer may not claim informer’s reward for service it is his or her official duty to perform).

You state portions of the submitted information reveal the identities of complainants who reported possible violations of Chapter 8 of the city’s code of ordinances and sections 2303.301 and 2303.302 of the Texas Occupations Code to the Houston Police Department’s Auto Dealers Detail (the “department”). You explain that the department is responsible for enforcing these provisions. You state that violations of these provisions are punishable by criminal or civil penalties. You do not indicate, nor does it appear, the subjects of the complaints know the identities of the complainants. Therefore, based on your representations and our review, we conclude the city may withhold the complainants’ identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, you have failed to demonstrate the remainder of the information you have marked consists of the identifying information of an individual who made the initial report of a criminal violation to the city for purposes of the informer’s privilege. Accordingly, the city may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. See Gov’t Code § 552.130. You seek to withhold portions of the remaining information, which you have marked, under section 552.130. However, we note some of the information you seek to withhold consists of a Wrecker Driver Permit License Number issued by the Texas Department of Licensing and Regulation. Accordingly, the city may not withhold this information, which we have marked for release, under section 552.130 of the Government Code. The city must withhold the remaining information you have marked under section 552.130 of the Government Code.

In summary, 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. With the exception of the information we have marked for release, the city must withhold the

information it has marked under section 552.130 of the Government Code. The city must release the remaining information.

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/ag

Ref: ID# 461045

Enc. Submitted documents

c: Requestor
(w/o enclosures)