



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2012

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2012-16324

Dear Ms. Soucy:

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# 467960 (Comptroller ID# 8476322335).

The Texas Comptroller of Public Accounts (the "comptroller's office") received a request for a specified complaint. You state the comptroller's office has released some of the requested information. You also state you have withheld an e-mail address under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You claim that 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. This exception 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

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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 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 explain the information at issue reveals the identity of an individual who reported a possible violation regarding sales tax to the comptroller. We understand the comptroller's office is a law enforcement agency for the purposes of administering the Tax Code. *AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 678-79 (Tex. 1995). You do not indicate, nor does it appear, the subject of the complaint knows the identity of the complainant. Therefore, based on your representations and our review, we conclude the comptroller's office may withhold the complainant's identifying information, which we have marked, under section 552.101 in conjunction with the common-law informer's privilege. However, we find the remaining information you have marked does not identify the complainant for the purposes of the informer's privilege and may not be withheld under section 552.101 on this basis. As you raise no further exceptions 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, 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

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Ref: ID# 467960

Enc. Submitted documents

c: Requestor
(w/o enclosures)