



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2012

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

OR2012-18667

Dear Ms. Burton:

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# 474302.

The Texas Department of State Health Services (the "department") received a request for the name of the individual that filed a specified complaint against the requestor's business. You claim the requested 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.

Initially, we note most of the submitted information is not responsive to the instant request for information. The requestor only asks for the name of the individual that filed a specified complaint against the requestor's business. Accordingly, only the name of the individual that filed the complaint against the requestor's business is responsive to the request. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

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 the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See 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.” *See* Open Records Decision No. 279 at 1-2 (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. The privilege excepts the informer’s statement only to the extent necessary to protect the informer’s identity. *See* Open Records Decision No. 549 at 5 (1990).

You inform us that the department is charged with investigating potential violations of the Texas Food, Drug, and Cosmetic Act. *See generally* Health & Safety Code ch. 431. You state that the responsive information identifies an individual who reported possible violations of the Texas Food, Drug, and Cosmetic Act to the department. We understand violations of the Texas Food, Drug, and Cosmetic Act are punishable by civil and criminal penalties. *See id.* §§ 431.0585, .059. Based on your representations and our review, we conclude that the department may withhold the responsive information under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 474302

Enc. Submitted documents

c: Requestor
(w/o enclosures)