ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2012

Ms. Danielle R. Folsom
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-19395

Dear Ms. Folsom:

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# 472493 (GC No. 20001).

The City of Houston (the "city") received a request for complaints and related recordings involving the requestor's property. You state you will release some information to the requestor. You claim 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses the informer's privilege, which has long been recognized by Texas courts. *E.g., 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 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. *See* Open Records Decision No. 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 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 (1988). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You state the information you have marked and the submitted recording reveal the identity of an individual who reported possible violations of the city's building code using the city's 3-1-1 system. You inform us the 3-1-1 system forwarded the complaint to the city's Public Works and Engineering Department, which is authorized to enforce the portion of the code at issue. You explain a violation of the city's building code is punishable by a civil penalty. You state there is no reason to believe the requestor knows the identity of the complainant. However, in a letter to this office, the requestor states he knows the identity of the complainant and provides a name. We note the submitted information contains the address and voice of the complainant, but does not contain the complainant's name. As we are unable to determine whether the requestor knows the identity of the complainant, we must rule conditionally. In some circumstances, where an oral statement is captured on tape and the voice of the informant is recognizable, it may be necessary to withhold the entire statement to protect the informant's identity. Open Records Decision No. 434 at 2 (1986). To the extent the requestor does not know the identity of the complainant, the city must withhold the information we have marked and the submitted audio recording under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Upon review, we find the remaining information you seek to withhold does not identify a complainant. Accordingly, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege and the city must release the remaining information. To the extent the requestor knows the identity of the complainant, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. In that instance, the city must release the submitted 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,

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 472493

Enc. Submitted documents

c: Two Requestors
(w/o enclosures)