



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

January 2, 2013

Ms. Shelly Doty  
City Secretary/Records Manager  
City of Cleburne  
P.O. Box 677  
Cleburne, Texas 76033-0677

OR2013-00033

Dear Ms. Doty:

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# 474993.

The City of Cleburne (the "city") received a request for a complaint concerning the untimely removal of a plastic cart used for garbage collection. You claim portions of the requested information are 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 (interested party may submit comments stating why information should or should not be released).

We first address the requestor's assertion that he has a right of access to the submitted information pursuant to section 614.023 of the Government Code. Section 614.023 provides:

(a) A copy of a signed complaint against a law enforcement officer of this state or a fire fighter, detention officer, county jailer, or peace officer appointed or employed by a political subdivision of this state shall be given to the officer or employee within a reasonable time after the complaint is filed.

*Id.* § 614.023(a). Section 614.021(a)(3) provides that, except as provided by subsection (b), subchapter B of chapter 614 applies to a peace officer under article 2.12 of the Code of

Criminal Procedure or other law who is appointed or employed by a political subdivision of this state. *Id.* § 614.021(a)(3). The requestor states he is a police officer. We note, however, the submitted information does not consist of a signed complaint against the requestor. *See id.* § 641.022 (complaint must be in writing and signed by the person making the complaint). Thus, the requestor does not have a right of access under section 614.023 to any of the submitted information.

We now turn to your argument under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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 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). We note the informer's privilege does not apply if the subject of the complaint knows the informer's identity. *See* ORD 208 at 1-2.

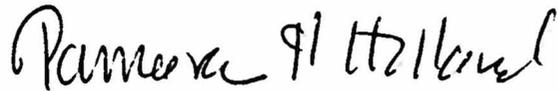
You state the submitted information identifies an individual who reported a possible violation of section 50.99 of the city's Code of Ordinances. You also state that this violation was reported to the city manager, who is charged with overseeing the enforcement of the city's ordinances. You state and provide documentation showing that a violation of the ordinance involved can result in a fine. Based on your representations and our review of the submitted information, we conclude that the city may withhold the informer's identifying information, which we have marked, under section 552.101 in conjunction with the informer's privilege. 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](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,

A handwritten signature in cursive script, appearing to read "Tamara H. Holland".

Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/dls

Ref: ID# 474993

Enc. Submitted documents

c: Requestor  
(w/o enclosures)