



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2013

Ms. Kristy Ashberry
City Secretary
City of Rockwall
385 South Goliad
Rockwall, Texas 75087

OR2013-01644

Dear Ms. Kristy Ashberry:

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# 477345.

The City of Rockwall (the "city") received a request for information pertaining to a specified case number. You state the city will redact e-mail addresses of members of the public under section 552.137 of the Government Code.¹ You claim 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. The informer's privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts. *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). It protects from disclosure 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. Open Records

¹We note Open Records Decision No. 684 (2009) 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.

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 (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, the informer's privilege protects the content of the communication only to the extent that it identifies the informant. *Roviaro v. United States*, 353 U.S. 53, 60 (1957).

You seek to withhold the identifying information of a complainant under the common-law informer's privilege. Upon review, we find the submitted information reflects a violation of the city's Code of Ordinances. However, you do not inform us, nor does the submitted information reflect, that any such violation carries civil or criminal penalties. Thus, we find you have failed to demonstrate how any portion of the submitted information consists of the identifying information of an individual who made the initial report of a violation of a statute or ordinance to the city for purposes of the informer's privilege. Accordingly, the city may not withhold any portion of the submitted information under section 552.101 of the Government Code on the basis of the common-law informer's privilege. As you raise no other exceptions to disclosure, 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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 477345

Enc. Submitted documents

**c: Requestor
(w/o enclosures)**