



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 19, 2013

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

OR2013-06410

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# 484880 (Houston GC No. 20296).

The City of Houston (the "city") received a request for the phone call pertaining to a specified case.<sup>1</sup> You claim that 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 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

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<sup>1</sup>We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

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 submitted recording reveals the identity of an individual who reported a possible permit violation of the city's residential 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 residential code is punishable by a criminal penalty. You state there is no reason to believe the requestor knows the identity of the complainant. 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). Accordingly, the city may withhold the submitted audio recording in its entirety 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](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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/tch

Ref: ID# 484880

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

