ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 4, 2013

Mr. David Ritter
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2013-21038

Dear Mr. Ritter:

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# 512455.

The City of Plano (the "city") received a request for information pertaining to a specified complaint. You claim some of the requested information is excepted from disclosure under section552.101 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. Section 552.101 of the Government Code 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* Open Records Decision No. 208 at 1-2 (1978).

You state the submitted information identifies a complainant who reported a possible violation of the city's code, which is enforced by the city's Health Department (the "department"). You explain the department has the authority to enforce the violation at issue. You also explain the code imposes a criminal penalty for the violation at issue. You do not indicate, nor does it appear, the subject of the complaint knows the identity of the complainant. Based upon your representations and our review, we conclude that the city may withhold the identifying information of the complainant, which you have marked, under section 552.101 of the Government Code in conjunction with the common-law 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

Tamara H Holland

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/akg

Ref: ID# 512455

Enc. Submitted documents

c: Requestor
(w/o enclosures)