



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2014

Mr. Brandon W. Carr
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2014-20208

Dear Mr. Carr:

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# 542448 (City ID# W036376).

The City of Fort Worth (the "city") received a request for all code enforcement records involving the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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 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 informer's privilege protects 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 report does not

¹We note you also claim the informer's privilege under Texas Rule of Evidence 508. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *see also* Gov't Code § 552.022(a). In this instance, section 552.022 is not applicable to the information you seek to withhold under the informer's privilege and, therefore, we do not address your argument under rule 508.

already know the informer's identity. Open Records Decision Nos. 515 at 2-3 (1988), 434 at 1-2 (1986), 208 at 1-2 (1978). The privilege protects the identities of individuals who report violations of statutes to criminal 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)). For the informer's privilege to apply, the report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at (1990), 515 at 3-4.

You assert portions of the submitted information reveal the identities of individuals who reported possible city code violations to the city staff members responsible for enforcing city code violations. You explain the violations at issue carry the penalty of a fine. You further state the city has no indication the accused knows the identities of the informers. Based on these representations and our review, we conclude portions of the information at issue are protected under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Accordingly, the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, you have not demonstrated how the remaining information you have marked identifies an informer for purposes of the common-law informer's privilege; thus, none of the remaining information at issue may be withheld under section 552.101 of the Government Code on that basis. As you raise no further exceptions to disclosure, 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 542448

Enc. Submitted documents

c: Requestor
(w/o enclosures)