



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 25, 2022

Mr. Skyler Shafer  
Assistant General Counsel  
Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711

OR2022-01915

Dear Mr. Shafer:

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# 926579 (TDA-PIR-22-088).

The Texas Department of Agriculture (the "department") received a request for all information related to a specified complaint. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions 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. You raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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. *See Open Records Decision No. 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 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). We note the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. *See* ORD 208 at 1-2.

You state the information you have marked consists of identifying information of a complainant who reported possible violations of the Agriculture Code. You explain the department is charged with inspecting properties to ensure compliance with the laws at issue. *See* Agric. Code § 122.053. We note there are administrative penalties for violations of the laws at issue. *See* Agric. Code § 122.402. Based upon these representations and our review, we conclude you have demonstrated the applicability of the common-law informer's privilege to some of the submitted information. We have no indication the subject of the complaint knows the identity of the complainant. Therefore, the department may withhold the information you have marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.<sup>1</sup> As you raise no further exceptions to disclosure, the department 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/jxd

Ref: ID# 926579

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.