ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 23, 2005

Mr. Randy A. Stoneroad
Police Legal Advisor
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2005-01590

Dear Mr. Stoneroad:

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# 219178.

The City of Corpus Christi (the "city") received a request for information relating to a particular incident. You state that you are releasing some of the requested information. You also indicate that the city does not maintain a portion of the requested information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received). You claim that other requested information is excepted from disclosure under sections 552.101 and 552.130 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. This section encompasses 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). This 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 that 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). It 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 Wigmore, Evidence, § 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 (1988).

You state that the complaint at issue involves alleged violations of law. Further, your representations and our review of the submitted information indicate that the complaint was made to officials responsible for enforcing the statute that was allegedly violated and that such violation is punishable by criminal penalties. Having considered your representations and reviewed the submitted information, we find that the informer's identifying information may be withheld pursuant to section 552.101 of the Government Code in conjunction with the common law informer's privilege.

You also claim that the motor vehicle record information contained in the incident activity summary is excepted from disclosure under section 552.130 of the Government Code. This section provides in relevant part:

> (a) Information is excepted from the requirement of Section 552.021 if the information relates to:
>
> > (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
> >
> > (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a). Accordingly, to the extent the motor vehicle record information pertains to motor vehicle records issued by the State of Texas, it must be withheld under section 552.130.

In summary: (1) the city may withhold the informer's identifying information pursuant to section 552.101 of the Government Code in conjunction with the common law informer's privilege; (2) to the extent the motor vehicle record information contained in the submitted documents pertains to motor vehicle records issued by the State of Texas, it must be withheld under section 552.130 of the Government Code; and (3) the remainder of the submitted information must be released. As our ruling is dispositive, we need not address your remaining arguments.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 219178

Enc. Submitted documents

c: Ms. Cynthia Graham Powell
P. O. Box 10232
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(w/o enclosures)