ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2005

Mr. John T. Patterson
Assistant City Attorney
City of Waco
P. O. Box 2570
Waco, Texas 76702-2570

OR2005-09865

Dear Mr. Patterson:

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# 235320.

The Waco Police Department (the "department") received a request for information pertaining to a specified incident. You state that you will release some of the requested information but claim that portions of the submitted information are 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 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 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). It 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). 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 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). The privilege excepts an informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990). However, witnesses who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer's privilege.

You seek to withhold information relating to an individual who reported a burglary of a motor vehicle to the department. You assert that the release of the information you have highlighted would identify the informer. Having considered your arguments and reviewed the information at issue, we agree that a portion of the information you have highlighted may be withheld pursuant to section 552.101 of the Government Code in conjunction with the common law informer's privilege. *See* Open Records Decision Nos. 279 at 2 (1981), 156 (1977) (granting informer's privilege for the identity of an individual who reported to a city animal control division a possible violation of a statute that carried with it criminal penalties). However, some of the information you have highlighted in pink is not protected under section 552.101 in conjunction with the common law informer's privilege and may not be withheld on that basis. Therefore, the department may withhold the information we have marked under section 552.101 in conjunction with the common law informer's privilege.

You also claim that the Texas motor vehicle information you have highlighted is subject to section 552.130 of the Government Code, providing in relevant part:

> (a) Information is excepted from the requirements 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). The highlighted Texas-issued motor vehicle information falls within the scope of section 552.130. However, section 552.023(a) provides a special right of access to a person or a person's authorized representative "beyond the right of the general public, to [confidential] information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Section 552.130 is intended to protect the privacy rights of individuals. In this instance, the requestor is the individual to whom some of the highlighted motor vehicle information pertains. Therefore, the department must release that information to the requestor under section 552.023. The remaining motor vehicle record information, which we have marked, must be withheld pursuant to section 552.130.

In summary, the department may withhold the portions of the submitted information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the

common law informer's privilege. The department must withhold the submitted Texas-issued motor vehicle record information that we have marked under section 552.130 of the Government Code. The remaining submitted information must be released.[1]

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); *Texas 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

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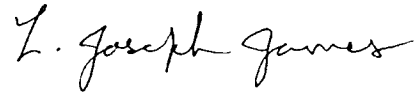
[1]Some of the submitted information consists of confidential information that is not subject to release to the general public. *See* Gov't Code § 552.352. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because some of the information is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the requestor or her authorized representative, the department should again seek our decision.

complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General 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. 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/krl

Ref: ID# 235320

Enc. Submitted documents

c: Mr. June Lee Goff
606 N. 5th Street
Waco, Texas 76701
(w/o enclosures)