



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2007

Mr. Leonard V. Schneider
Ross, Banks, May, Cron & Cavin, P.C.
Attorneys for the City of League City
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2007-00411

Dear Mr. Schneider:

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# 268960.

The City of League City (the "city"), which you represent, received a request for "all complaints and citations issued of any type and the complete folder for" eight specified addresses on Dublin Drive. You state the city has released much of the requested information but you claim that the submitted 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 information made confidential by other statutes. Section 261.201 of the Family Code provides in relevant part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You argue that the information submitted as Exhibit A is confidential under section 261.201. Upon review, we agree that Exhibit A consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. You have not indicated that the city has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, Exhibit A is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold Exhibit A under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 8, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See* Gov’t Code § 411.082(2)(B) (term CHRI does not include driving record information). Accordingly, the city must withhold the CHRI that we have marked in Exhibit F under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

You claim that the identifying information in Exhibit E is excepted under section 552.101 in conjunction with the common law informer’s privilege. The common law informer’s privilege 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 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 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 informer's privilege does not, however, apply to information that does not describe alleged illegal conduct. Open Records Decision No. 515 at 5 (1988). In addition, 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).

In this instance, you explain that the information at issue identifies persons who reported alleged violations of nuisance laws to the city police department. You inform us the alleged violations at issue carry civil and criminal penalties. Accordingly, the city may withhold the identifying information you have marked in Exhibit E pursuant to section 552.101 of the Government Code in conjunction with the informer's privilege.

Section 552.101 also encompasses the doctrine of common law privacy, which protects information that is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common law privacy interest which prevents disclosure of information that would identify the victim. See also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Accordingly, we have marked the identifying information of alleged sexual assault victims in Exhibits B and C that must be withheld pursuant to section 552.101 in conjunction with common law privacy. See Open Records Decision Nos. 393 (1983), 339 (1982).

This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). The city must withhold the personal financial information we have marked in Exhibit F under section 552.101 of the Government Code in conjunction with common law privacy. Upon review, we find none of remaining submitted information is protected by common law privacy and may not be withheld under section 552.101 on that basis.

Section 552.130 of the Government Code excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. Thus, the city must withhold the Texas driver’s license and motor vehicle information we have marked in accordance with section 552.130 of the Government Code.

In summary, the city must withhold the following information in conjunction with section 552.101 of the Government Code: (1) Exhibit A under section 261.201 of the Family Code, (2) the CHRI we have marked in Exhibit F under chapter 411 of the Government Code and federal law, (3) the identifying information you have marked in Exhibit E under the informer’s privilege, and (4) the information we have marked in Exhibits B, C and F under common law privacy. The city must withhold the information we have marked in Exhibit F under section 552.130 of the Government Code. The remaining submitted information must be released.

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 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 268960

Enc. Submitted documents

c: Mr. Dwight Sullivan
2012 Dublin Drive
League City, Texas 77573
(w/o enclosures)