



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 3, 2008

Mr. Mack Reinwand  
Assistant Police Legal Advisor  
Arlington Police Department  
Mail Stop 04-0200  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2008-07489

Dear Mr. Reinwand:

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# 313097.

The Arlington Police Department (the "department") received a request for the full arrest report and the certified background check of a named individual. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. 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." *Id.* § 552.101. This section encompasses the 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 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. 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. Additionally, 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.

You state that the requested record includes the identity of persons who furnished information of possible law violations to officers charged with enforcing those laws. We note that the submitted information contains the identity of a person who reported to the department an alleged violation of criminal laws which carries a criminal penalty. Therefore, we conclude that the department has demonstrated the applicability of the common-law informer's privilege in this instance. Accordingly, the informant's identifying information, which we have marked, may be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

We note that the submitted documents contain information subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 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. Because this exception protects personal privacy, the requestor has a right of access to his own motor vehicle record information, and that information may not be withheld from this requestor under section 552.130. Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the department must withhold the Texas driver's license information we have marked pursuant to section 552.130 of the Government Code.

In summary, the department may withhold the informant's identifying information, which 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 Texas driver's license information we have marked under section 552.130 of the Government Code. As

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

you raise no other arguments against the disclosure of the remaining information, it must be released to the requestor.<sup>2</sup>

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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).

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<sup>2</sup>The remaining information contains a social security number. Section 552.147 of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147. The requestor has a right, however, to his own social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). Should the department receive another request for these same records from a person who would not have a right of access to the requestor's private information, the department should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302.

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,

A handwritten signature in black ink, appearing to read 'Jessica J. Maloney', written in a cursive style.

Jessica J. Maloney  
Assistant Attorney General  
Open Records Division

JJM/jh

Ref: ID# 313097

Enc. Submitted documents

c: Mr. Clifford G. Burton  
718 South Center Street  
Grand Prairie, Texas 75051  
(w/o enclosures)