



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 2, 2008

Mr. Lawrence G. Provins
Assistant City Attorney
City of Pearland
3519 Liberty Drive
Pearland, Texas 77581-5416

OR2008-13562

Dear Mr. Provins:

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# 323477.

The City of Pearland (the "city") received a request for information pertaining to a specified incident. You state that you have released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us that the requestor has agreed to allow the city to withhold driver's license numbers, social security numbers, and vehicle identification numbers from the responsive information. As this information is no longer encompassed by the request, it is not responsive and we do not address its availability in this ruling.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the informer's privilege, which has long been recognized by Texas courts. *E.g.*, *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. *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). 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). 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. 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).

You state that the submitted information contains identifying information of individuals who reported a possible criminal violation to the city's police department. Thus, based upon your representations and our review, we conclude that the city may withhold the identifying of the complainant, which we have marked, under section 552.101 of the Government Code in conjunction with the informer's privilege. We have also indicated which types of information must be withheld from the submitted audio recording under section 552.101 in conjunction with the informer's privilege. In the event the city is unable to redact this information from the submitted recording, then the recording must be withheld in its entirety pursuant to section 552.101 in conjunction with the informer's privilege. *See* Open Records Decision No. 364 (1983). However, the remaining information you seek to withhold pertains to witnesses who provided information in the course of the city police department's investigation. As stated above, 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. Therefore, the remaining information you have marked may not be withheld pursuant to section 552.101 in conjunction with the informer's privilege.

We note that the remaining information contains license plate numbers. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.¹ Gov't Code § 552.130(a)(1), (2). However, we note that the requestor may be the individual to whom the marked license plate numbers belong. Section 552.023 of the Government Code provides a person or a person's authorized representative a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure bylaws intended to protect the person's privacy interests. *Id.* § 552.023(a). Section 552.130 is intended to protect

¹The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

privacy interests. Thus, to the extent the requestor has a right of access to the marked Texas license plate number under section 552.023, the city must release this information to the requestor. To the extent the requestor does not have a right of access to the information at issue, it must be withheld under section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 in conjunction with the informer's privilege. In addition, we have indicated the types of information the city must withhold from the submitted audio recording under section 552.101 in conjunction with the informer's privilege; however, the city must withhold the CD in its entirety if it is unable to redact the portions of the recording that reveal this information. The city must withhold the information we have marked under section 552.130, except to the extent that the requestor has a right of access to that information under section 552.023 of the Government Code. The remaining responsive 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 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). If the governmental body does not file suit over 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).

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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 323477

Enc.: Submitted documents

c: Ms. Martha Davis
8913 Sungate Drive
Pearland, Texas 77584
(w/o enclosures)