



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 11, 2008

Mr. Mark D. Kennedy
ADA, Chief Civil Division
Hays County Criminal District Attorney- Civil Division
111 East San Antonio Street, Suite 204
San Marcos, Texas 78666

OR2008-16945

Dear Mr. Kennedy:

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# 329819.

The Hays County Judge's Office (the "county judge") received a request for (1) documents identifying complaints made against two named county commissioners pertaining to two specific roads, as referenced in two particular letters; (2) the identity of the individual(s) who made the complaints; and (3) all e-mails, telephone logs, and other correspondence from three named individuals. You state the county judge has released the information responsive to the third category of requested information. You claim that the 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 representative sample of information.¹

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

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Code § 552.101. This section encompasses the common-law informer's privilege, which has long been recognized by Texas courts.² 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). 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 the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990). Although you raise the informer's privilege, you have not identified the laws that were allegedly violated, nor have you explained whether the alleged violations carry any civil or criminal penalties. Accordingly, you have failed to demonstrate that the informer's privilege is applicable to the information at issue. Thus, we conclude that the county judge may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the informer's privilege.

We note that the submitted documents contain information subject to section 552.130 of the Government Code.³ Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(2). Accordingly, the county judge must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.

The remaining information also contains personal e-mail addresses. Section 552.137 of the Government Code requires a governmental body to withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. See *id.* § 552.137(b). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). You do not inform us that the owners of the e-mail addresses affirmatively consented to their release. Therefore, the county judge must withhold the e-mail addresses we have marked under section 552.137 of the Government Code.

²Although you raise the informer's privilege under Texas Rule of Evidence 508, we note that the proper exception to argue in this instance is section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Accordingly, we will consider the information at issue under section 552.101.

³The 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).

In summary, the county judge must withhold the information we have marked under sections 552.130 and 552.137 of the Government Code. The remaining 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,

A handwritten signature in black ink, appearing to read "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 329819

Enc. Submitted documents

c: Requestor
(w/o enclosures)
