



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 6, 2009

Mr. Clark McCoy
Wolfe, Tidwell & McCoy, L.L.P.
2591 Dallas Parkway, Suite 205
Frisco, Texas 75034

OR2009-02972

Dear Mr. Clark:

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# 336743.

The City of Aubrey (the "city"), which you represent, received a request for sixteen categories of information pertaining to employment, specific code violation complaints, contracts with third parties, certificate of occupancy inspections, and specified meetings.¹ You indicate you will release some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

You contend that a portion of the submitted information is excepted from disclosure under section 552.101 in conjunction with 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

¹You state the city sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²Although you raise section 552.024 of the Government Code as an exception to disclosure, we understand you to claim section 552.117 of the Government Code as this is the proper exception.

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 3-4 (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); *see* Wigmore, Evidence § 2374, at 767 (McNaughton rev. ed. 1961). The report must involve a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988).

You state that the submitted information contains the identifying information of complainants who reported possible violations of the city's animal control, nuisance and property maintenance ordinances and that such violations provide for a fine of up to \$2000. We understand that the complaint was made to the city department that is responsible for enforcing such laws. Having examined these provisions, your arguments, and the documents at issue, we conclude that the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the informer's privilege.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't § 552.117(a)(1). Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state, and provide documentation showing, that prior to the city's receipt of the instant request, the employee at issue elected to keep her information confidential pursuant to section 552.024. Thus, the city must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code.

We note that some of the remaining information is subject to section 552.130 of the Government Code, which excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state.³ Gov't Code § 552.130. Accordingly, the city must withhold the Texas motor vehicle record information we have marked under section 552.130.

In summary, the city may withhold the information we have marked under section 525.101 of the Government Code in conjunction with the informer's privilege. The city must

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. The city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/cc

Ref: ID# 336743

Enc. Submitted documents

cc: Requestor
(w/o enclosures)