



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
Office of the City Attorney
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-11531

Dear Ms. Byles:

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# 352635 (Fort Worth PIR# 3883-09).

The City of Fort Worth (the "city") received a request for all city police and city animal control records related to eleven specified addresses. You state that you have redacted certain Texas motor vehicle record information relating to individuals other than the requestor under section 552.130 of the Government Code pursuant to previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

¹Although you also claim portions of the submitted information are privileged under the informer's privilege of rule 508 of the Texas Rules of Evidence, this office has concluded that section 552.101 does not encompass discovery privileges under the Texas Rules of Evidence. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Section 552.101 in conjunction with the common-law informer's privilege is the proper exception for raising the informer's privilege.

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Although you argue that the present request requires the city to compile an individual's criminal history, the request asks for information related to specific addresses and does not involve any named individuals. Therefore, this request does not require the city to compile any individual's criminal history, and the city may not withhold any of the submitted information on that basis.

Section 552.101 also encompasses the common-law informer's privilege, which Texas courts have long recognized. *See, 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 portions of the submitted information reveal the identity of persons who reported alleged violations of the city's Municipal Code to the city's Animal Control division, which has authority to enforce the code section at issue. You also provide

documentation showing that violations of this code section carry civil penalties. We agree that the information we have marked tends to identify the persons who reported the alleged violations. Thus, the city may withhold this information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, the remaining information you have marked under the common-law informer's privilege does not identify the informer; therefore, the city may not withhold any of the remaining information on the basis of this exception.

You argue that the same information you marked under the informer's privilege is confidential pursuant to common-law privacy and "special circumstances." However, the Third Court of Appeals recently ruled that the "special circumstances" exception found in past Attorney General Open Records Decisions directly conflicts with Texas Supreme Court precedent regarding common-law privacy. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. and Hearst Newspapers, L.L.C.*, No. 03-08-00516-CV, 2009 WL 1491880 (Tex. App.—Austin May 29, 2009, no pet. h.). The court of appeals ruled that the two-part test set out in *Industrial Foundation* is the "sole criteria" for determining whether information may be withheld under common-law privacy. *Id.*; see also *Indus. Found.*, 540 S.W.2d at 686. Upon review, we find that the remaining information for which you assert "special circumstances" is not intimate or embarrassing. As you have failed to meet the first prong of the *Industrial Foundation* test for privacy, we find that the remaining information for which you assert "special circumstances" is not confidential under common-law privacy, and the city may not withhold this information on that basis.

Section 552.101 also encompasses information made confidential by statutes, including Chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 are applicable to emergency 9-1-1 districts established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier confidential. See *id.* at 2. You inform us that the city is part of an emergency communication district established under section 772.218 of the Health and Safety Code. You indicate that the telephone numbers and addresses you have marked in the submitted 9-1-1 call reports were provided by a 9-1-1 service supplier. Based on your representations, we conclude that the city must withhold the telephone numbers and addresses you have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. However, we note that you have marked information beyond telephone numbers and addresses under section 772.218. As this section applies only to telephone numbers and addresses, the city may not withhold any additional information under section 552.101 in conjunction with section 772.218.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, 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 at 7 (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 the Department of Public Safety ("DPS") maintains, except 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. Similarly, 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. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. However, the remaining information you have marked on this basis does not constitute CHRI, and the city may not withhold this information on that basis.

Finally, you seek to withhold Texas motor vehicle information beyond the scope of the previous determinations issued to the city. 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[.]" *Id.* § 552.130(a)(1), (2). Accordingly, the city must withhold the information you have marked pursuant to section 552.130.

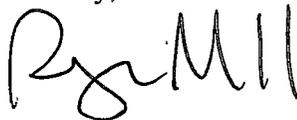
In summary, the city: (1) may withhold the information we have marked under section 552.101 in conjunction with the common-law informer's privilege; (2) must withhold the telephone numbers and addresses you have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code; (3) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code; (4) must withhold the information you have marked pursuant to section 552.130 of the Government Code; and (5) must release the remainder of the submitted information.

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,

A handwritten signature in black ink, appearing to read "Ryan T. Mitchell". The signature is fluid and cursive, with the first name "Ryan" and last name "Mitchell" clearly distinguishable.

Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 352635

Enc. Submitted documents

cc: Requestor
(w/o enclosures)