



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 22, 2009

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-18134

Dear Mr. Bounds:

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# 365188.

The City of Corpus Christi (the "city") received a request for police, code enforcement, and animal control reports relating to two specified addresses within the last three years.¹ You state the city has released some of the responsive information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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." Gov't Code § 552.101. The common-law informer's privilege, which is incorporated into the Act under section 552.101, has long been recognized by Texas courts. *See Aguilar v. State*, 444

¹The city sought and received clarification from the requestor. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision Nos. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed); 663 (1999) (discussing tolling of deadlines during period governmental body is waiting for clarification).

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 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.

You state the submitted information contains the identifying information of an individual who reported a possible violation of a city ordinance regarding public nuisances. You state the report was made to the city's code enforcement officials, who have authority for enforcing the city's nuisance ordinances. You further state, and provide documentation showing, that the violation at issue carries a criminal penalty. Based on your representations and our review of the submitted information, we conclude the city may withhold the information you have marked under section 552.101 in conjunction with the informer's privilege.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Industrial Found. v. Texas 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 demonstrated. *See id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we agree that the information you have marked is highly intimate or embarrassing and of no legitimate public concern. Therefore, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit. *See* Gov't Code § 552.130(a)(1). The city must withhold the driver's license numbers you marked pursuant to section 552.130.²

In summary, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege and common-law privacy. The city must withhold the information you 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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/cc

Ref: ID# 365188

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.