



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 11, 2010

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2010-00491

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# 371633 (FW PIR No.1102-10).

The City of Fort Worth (the "city") received a request for animal control records pertaining to a specified address. You claim 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.

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 informer's privilege, incorporated into the Act by section 552.101, 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). It 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

¹Although you also raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 508, 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)*.

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." See 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. 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.

In this instance, you state some of the submitted information consists of the identifying information of a complainant who reported violations of the city code to city staff members charged with enforcement of the code. You inform us, and provide documentation showing, that violations of the code are punishable by a fine of up to \$2,000 per day per violation. Based on your representations and our review of the information at issue, we conclude the city may withhold the complainant's identifying information, which you have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

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[.]" Gov't Code § 552.130(a)(1), (2). Accordingly, the city must withhold the information you have marked pursuant to section 552.130 of the Government Code.²

In summary, the city may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must withhold the information you have marked pursuant to section 552.130 of the Government Code. The remaining information must be released to the requestor.

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,

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.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 371633

Enc. Submitted documents

cc: Requestor
(w/o enclosures)