



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2010

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
600 North Bell Boulevard
Cedar Park, Texas 78613

OR2010-02168

Dear Ms. Quinn:

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# 370367 (City of Cedar Park Reference #'s 10-076 & 10-109).

The City of Cedar Park (the "city") received two requests from the same requestor for information pertaining to three specified call numbers. You state you will make some of the requested information available to the requestor. You inform us the city does not maintain information responsive to a portion of one of the requests.¹ 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.

Initially, we note that a portion of the submitted information, which we have marked, is subject to section 552.022 of the Government Code. Section 552.022 provides that:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

¹We note the Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). In this instance, the submitted information includes a court-filed document subject to section 552.022(a)(17). The city must release the marked information unless it is expressly confidential under other law. We note that while you raise section 552.101 in conjunction with common-law privacy for portions of this document, information that has been filed with a court is not protected by common-law privacy. See *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). However, the common-law informer's privilege, which you also claim under section 552.101 of the Government Code, is other law that makes information confidential for the purposes of section 552.022. See *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *Tex. Comm'n on Envtl. Quality v. Abbott*, No. GV-300417 (126th Dist. Ct., Travis County, Tex.). Therefore, we will consider your informer's privilege claim for the court-filed document that is subject to section 552.022, as well as your arguments under sections 552.101 and 552.130 for the remaining information not subject to section 552.022.

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. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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 public 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). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved and the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the submitted information reveals the requestor knows the identity of the individual involved as well as the nature of the information in call number 0601-2974. Therefore, withholding only the individual's identity or certain details of the incident from this requestor would not preserve the subject individual's common-law right of privacy. Consequently, the city must withhold call number 0601-2974 in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. Additionally, we find portions

of the remaining information, which we have marked, are highly intimate or embarrassing and not of legitimate public concern. Accordingly, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. You have failed to demonstrate, however, how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Next, you raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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)*.

You contend the information you have marked in the remaining information reveals the identity of individuals who provided information regarding an alleged assault, a misdemeanor, to the Cedar Park Police Department. Based upon your representations and our review, we conclude the city has demonstrated the applicability of the common-law informer's privilege to some of the remaining information. Therefore, the city may withhold the identifying information of the informants, which we have marked, pursuant to 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 informer's privilege does not identify or tend to identify the informants. Accordingly, the city may not withhold any of the remaining information under section 552.101 in conjunction with the common-law informer's privilege.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See Gov't Code § 552.130*. Thus, the city must withhold the Texas driver's license number you have marked under section 552.130.²

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 a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the city must withhold call number 0601-2974 in its entirety, as well as the information we have marked in the remaining information, under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold the identifying information of the informants, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must withhold the Texas driver's license number you have marked under section 552.130 of the Government Code. The remaining information must be released.³

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 370367

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

³We note that the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987). Therefore, if the city receives another request for this particular information from a different requestor, then the city must again seek a decision from this office.