



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 30, 2010

Mr. Tyler Wallach  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2010-06240

Dear Mr. Wallach:

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# 377712 (Fort Worth PIR Nos. 2220-10, 2427-10, 2577-10).

The City of Fort Worth (the "city") received two requests from one requestor and an additional request from a different requestor for all reports and complaints concerning the animals at a specified address. You state that you are releasing most of the requested information. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.136, and 552.147 of the Government Code.<sup>1</sup> 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. Section 552.101 encompasses information protected by 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). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or

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<sup>1</sup>We note that you also claim the informer's privilege under Texas Rule of Evidence 508. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); Gov't Code § 552.022(a). In this instance, however, section 552.022 is not applicable to the information that you seek to withhold under the informer's privilege, and therefore, we do not address your arguments under rule 508.

quasi-criminal law-enforcement authority. *See* Open Records Decision No. 515 at 3 (1998). 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. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See Roviato v. United States*, 353 U.S. 53, 60 (1957); Open Records Decision No. 549 at 5 (1990). We note the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208, 1-2 (1978).

In this instance, you state some of the submitted information consists of the identifying information of a complainant who reported a violation of a city code to city staff members charged with enforcement of the code. However, in this instance, the first requestor's first request and the submitted documents reveal that the informant's identity is known to the individual who is the subject of the complaint. Thus, none of the complainant's identifying information may be withheld under the informer's privilege and the city may not withhold any of the submitted information under section 552.101 on that basis.

Section 552.101 of the Government Code also 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *See id.* at 681-82. The types of information considered highly intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. Upon review, we find that no portion of the submitted information is highly intimate or embarrassing. Thus, none of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release.<sup>2</sup> Gov't Code § 552.130(a)(1). Therefore, the city must withhold the Texas

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136. Accordingly, the city must withhold the customer account number you have marked under section 552.136 of the Government Code.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.<sup>3</sup> Accordingly, the city may withhold the social security number you have marked pursuant to section 552.147 of the Government Code.

We note, however, that some of the submitted information pertains to the first requestor. Section 552.023 of the Government Code gives a person a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person’s privacy interest. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Sections 552.130, 552.136, and 552.147 of the Government Code are intended to protect a person’s privacy interest; therefore, the city may not withhold from the first requestor the information relating to him that is marked under sections 552.130, 552.136, and 552.147 of the Government Code.

In summary, the city must withhold the information marked under sections 552.130 and 552.136 of the Government Code and may withhold the social security number under section 552.147 of the Government Code; however, this information pertaining to the first requestor must be released to him pursuant to section 552.023 of the Government Code.<sup>4</sup> The city must release the remaining 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.

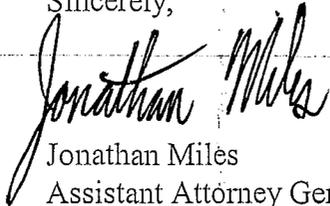
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<sup>3</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

<sup>4</sup>We 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.

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](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,

A handwritten signature in black ink that reads "Jonathan Miles". The signature is written in a cursive style with a large initial "J".

Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 377712

Enc. Submitted documents

c: Requestor  
(w/o enclosures)