



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 23, 2010

Ms. Carol I. Fox Freeman  
Attorneys for City of League City  
Ross, Banks, May, Cron & Cavin, P.C.  
2 Riverway, Suite 700  
Houston, Texas 77056-1918

OR2010-09254

Dear Mr. Schneider:

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# 384007.

The City of League City (the "city"), which you represent, received a request for a specified incident report. You state you will redact certain information pursuant to the previous determination issued by this office in Open Records Decision No. 684 (2009).<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> You also state you have notified certain individuals to whom the requested information relates in accordance with section 552.304 of the Government Code. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for Attorney General ruling should or should not be released). As of the date of this letter, we have not received any arguments from interested third parties

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<sup>1</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 Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>2</sup>We note that although you raise section 552.108 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information.

regarding the information at issue. We have considered the exception 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 the doctrine of common-law privacy, which 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. *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. 540 S.W.2d at 683. This office has also concluded that public disclosure of an individual's home address and telephone number are not an invasion of privacy. *See* Open Records Decision Nos. 554 at 3 (1990); *see also* Open Records Decision No. 455 at 7 (1987) (home addresses and telephone numbers do not qualify as "intimate aspects of human affairs"). Moreover, both this office and the Third Court of Appeals have determined that dates of birth are not highly intimate or embarrassing information. *See Tex. Comptroller of Public Accounts v. Attorney Gen. of Tex.*, 244 S.W.3d 629 (Tex. App.—2008, pet. granted) ("We hold that date-of-birth information is not confidential[.]"); *see also* Attorney General Opinion MW-283 (1980) (public employee's date of birth not protected under privacy); ORD 455 at 7 (birth dates are not protected by privacy).

In this case, the submitted information pertains to an investigation of an alleged sexual assault. You claim that the portions of the information you have are marked are confidential pursuant to common-law privacy. Upon review, we find none of the information you seek to withhold is highly intimate or embarrassing or not of legitimate public concern. Therefore, none of the information at issue may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>3</sup>

Section 552.101 also 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 quasi-criminal law-enforcement authority. *See* Open Records Decision No. 515 at 3 (1998). The informer's privilege

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<sup>3</sup>You acknowledge the requestor has a right of access to her own information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (a person or person's authorized representative has special right of access, beyond the right of general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself).

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 *Roviaro 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 at 1-2 (1978).

You seek to withhold the identifying information of the reporting party, as well as identifying information pertaining to the witnesses, under the informer's privilege. We note that 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 the common-law informer's privilege. You represent, and the information reflects, the reporting party reported a sexual assault, which is a criminal offense under section 22.011 of the Penal Code, to the city's police department. You do not indicate, nor does it appear, the subject of the complaint knows the identity of this informer. Based on your representations and our review, we conclude the city may withhold the identifying information of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, the remaining information you have marked does not pertain to informants for the purposes of the common-law informer's privilege, and none of the remaining information may be withheld under section 552.101 on that basis. As you raise no additional exceptions to disclosure, the remaining information must be released to the requestor.<sup>4</sup>

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.

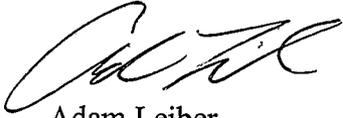
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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

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<sup>4</sup>We 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) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). However, if the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.

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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/tp

Ref: ID# 384007

Enc. Submitted documents

c: Requestor  
(w/o enclosures)