



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2010

Ms. Marie Feutz
City Secretary
City of Leon Valley
6400 El Verde Road
Leon Valley, Texas 78238

OR2010-11778

Dear Ms. Feutz:

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# 389247.

The City of Leon Valley (the "city") received a request for all police reports involving the requestor's son and reports involving threats of a drive-by during the last month. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.¹ 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 information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

¹While you state a portion of the submitted information is protected from disclosure by section 552.108 of the Government Code in conjunction with section 58.007 of the Family Code, we understand you to raise section 552.101 of the Government Code, as this is the proper exception for the substance of your argument.

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). You argue incident report numbers 201003344 and 201003491 are subject to section 58.007. Upon review, we find incident report number 201003491 involves allegations of juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). We note it does not appear the requestor has a right of access to incident report number 201003491. Thus, we conclude incident report number 201003491 is confidential pursuant to section 58.007(c) of the Family Code, and the city must withhold it under section 552.101 of the Government Code.² We note section 58.007(c) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant. Upon review, we find incident report number 201003344 does not list a juvenile as a suspect, offender, or defendant. Accordingly, incident report number 201003344 may not be withheld under section 552.101 in conjunction with section 58.007 of the Family Code.

You claim a portion of incident report number 201003344 is excepted from disclosure under the common-law informer’s privilege, which is also encompassed by section 552.101 of the Government Code. Texas courts have long recognized the common-law informer’s privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The common-law 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 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). The privilege excepts the informer’s statement only to the extent necessary to protect the informer’s identity.

²As our ruling is dispositive with respect to this information, we need not address the remaining argument against disclosure of the submitted information.

You assert the information in incident report number 201003344 regarding the witness to the altercation is protected by the common-law informer's privilege. We note witnesses who provide information in the course of an investigation but do not make the initial report of the violation are not informants for purposes of the informer's privilege. Thus, we conclude the city has failed to demonstrate the applicability of the common-law informer's privilege to the information at issue, and no portion of the information may be withheld on that basis.

Section 552.101 of the Government Code also 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types 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. *Id.* at 683. However, we note an individual's name, home address, and telephone number are generally not private information under common-law privacy. *See* Open Records Decision Nos. 554 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy).

Although you generally assert the information regarding the witness to the altercation in incident report number 201003344 is private, you provide no arguments explaining how this information is intimate and embarrassing. *See* Gov't Code § 552.301(e). Thus, we conclude you have failed to demonstrate the witness information at issue is highly intimate or embarrassing and not of legitimate public interest. Therefore, the information at issue may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note portions of incident report number 201003344 are subject to section 552.130 of the Government Code.³ Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Upon review, we find a portion of the information, which we have marked, consists of Texas motor vehicle record information. Accordingly, the city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.⁴

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴We 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 license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the city must withhold incident report number 201003491 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city must withhold the Texas motor vehicle record information we have marked within incident report number 201003344 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jb

Ref: ID# 389247

Enc. Submitted documents

c: Requestor
(w/o enclosures)