



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 14, 2010

Mr. Warren M. S. Ernst  
Chief of General Counsel Division  
City of Dallas  
1500 Marilla Street, Room 7BN  
Dallas, Texas 75201

OR2010-13914

Dear Mr. Ernst:

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# 393322.

The City of Dallas (the "city") received a request for reports, e-mails, and photographs pertaining to an "illegal dumping at Dixon Branch creek[.]" You state the city will release some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, and 552.137 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. 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 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 (1998), 208 at 1-2 (1978)*. The privilege protects the identities of individuals who report violations of statutes

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<sup>1</sup>Although 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). Because section 552.022 is not applicable to the information that you seek to withhold under the informer's privilege, we do not address your arguments under rule 508.

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 (1988). The privilege excepts the informer’s statement only to the extent necessary to protect the informer’s identity. *See* Open Records Decision No. 549 at 5 (1990).

You state Exhibit B identifies an informant who reported an alleged violation of section 19-118.2(f)(6)(F) of the city’s code to the city’s 3-1-1 call center where the call was routed the city’s Public Works and Transportation Department, which is in charge of enforcing the law in question. You also state the alleged violation is a misdemeanor punishable by a fine. Based on your representations and our review, we conclude the identifying information you marked in Exhibit B is protected by the common-law informer’s privilege. Accordingly, the city may withhold the information you marked in Exhibit B under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and family member information of a current or former official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code § 552.117(a)(1). We note section 552.117 encompasses cellular telephone numbers, provided a governmental body does not pay for the cellular telephone services. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state the employees whose information is at issue timely elected confidentiality for their information under section 552.024. Thus, we agree the city must withhold the cellular telephone numbers you marked in Exhibit D under section 552.117(a)(1) if the cellular services were paid for with personal funds.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The personal e-mail address you marked in Exhibit E is not excluded by subsection (c). Therefore, the city must withhold the marked e-mail address in Exhibit E under section 552.137, unless the owner affirmatively consents to its public disclosure.<sup>2</sup>

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<sup>2</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 e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the city may withhold the information you marked in Exhibit B under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must withhold the cellular telephone numbers you marked in Exhibit D under section 552.117(a)(1) of the Government Code if the cellular telephone services are paid for with personal funds. The city must also withhold the personal e-mail address you marked in Exhibit E under section 552.137 of the Government Code unless the owner affirmatively consents to its public disclosure.

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 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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 393322

Enc. Submitted documents

c: Requestor  
(w/o enclosures)