



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2010

Ms. Jerris Penrod Mapes
Assistant City Attorney
Killeen Police Department
3304 Community Boulevard
Killeen, Texas 76542

OR2010-14739

Dear Ms. Mapes:

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# 395632 (Killeen open records ID no. W003945).

The Killeen Police Department (the "department") received a request for all information regarding the specified arrest of a named individual. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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. The common-law informer's privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). This privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978).

You state the individual who reported the alleged violation of Texas Penal Code to the department in this instance is a confidential informant. We understand the department has the authority to enforce the alleged violation. The submitted information does not indicate the suspects know the identity of the reporting party. Thus, we conclude that the department may withhold the reporting party's identity, which we marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Portions of the remaining information are subject to section 552.130 of the Government Code.² Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license or driver's license issued by a Texas agency. Gov't Code § 552.130(a)(1). We note section 552.130 does not apply to out-of-state motor vehicle record information. We have marked the Texas driver's license and identification numbers in the submitted information that are subject to section 552.130. However, the requestor may represent an individual whose Texas driver's license number and identification number are at issue. An attorney has a right of access to information that would be protected from public disclosure for the purpose of protecting his client's own privacy interests. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). Section 552.130 is based on principles of privacy. Accordingly, if the requestor is the attorney for the individual whose Texas driver's license number and identification number we indicated, then these numbers must be released.³ If the requestor is not this individual's attorney, then the Texas driver's license and identification numbers we indicated must be withheld along with the other information we marked under section 552.130 of the Government Code.⁴

In summary, the department may withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The

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

³In such case, because the requestor's client's information would be confidential with respect to the general public, the department must again seek a ruling from this office if it receives another request for this information from another requestor.

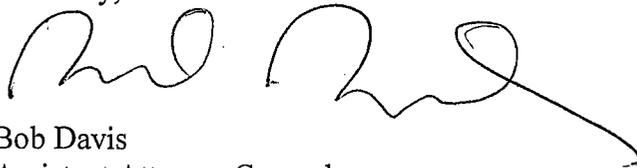
⁴We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

department must withhold the information we marked under section 552.130 of the Government Code, but must release the information we indicated if it pertains to a client of the requestor. The remaining information must be released.⁵

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 395632

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵The remaining information contains social security numbers. We note 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. Gov't Code § 552.147(b). However, because section 552.147 is based on principles of privacy, the requestor has a right of access to his client's social security number. *See id.* § 552.023(b).