



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2010

Mr. Tyler Wallach
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2010-16823

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# 399295 (Fort Worth PIR Request No. W003129).

The City of Fort Worth (the "city") received a request for code compliance records for a specified address during a specified period of time and all police calls related to the same property. You state you have released some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted any information regarding the requested police calls for our review. To the extent information regarding this portion of the request existed on the date the city received this request, we assume the city has released it. If the city has not released any such information, then the city must do so at this time. *See* Gov't Code §§ 552.301(a), 302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

¹We 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 you seek to withhold under the informer's privilege, and therefore, we do not address your arguments under rule 508.

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 (1988), 208 at 1-2 (1978)*. The 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." *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*. 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 have marked information the city seeks to withhold on the basis of the informer's privilege. You explain the marked information identifies an individual who reported an alleged violation of a city ordinance to the city's code enforcement department. You explain the city's code enforcement department is responsible for enforcing the ordinance at issue. You inform us, and provide documentation showing, that a violation of the ordinance involved is a misdemeanor that is punishable by a fine. You state it does not appear the subject of the complaint knows the identity of the complainant. Based on your representations, we conclude the city may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

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 remaining information is highly intimate or embarrassing. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

You state, and have indicated in the remaining information, the city will withhold certain Texas motor vehicle record information you have marked under section 552.130 of the

Government Code pursuant to Open Records Decision No. 684 (2009). This decision acts as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. This decision, however, does not authorize governmental bodies to withhold vehicle identification numbers under section 552.130 of the Government Code without the necessity of requesting an attorney general decision. In this instance, you have marked a vehicle identification number. Because Open Records Decision No. 684 does not authorize the withholding of vehicle identification numbers, the marked vehicle identification number may not be withheld under section 552.130 pursuant to Open Records Decision No. 684.

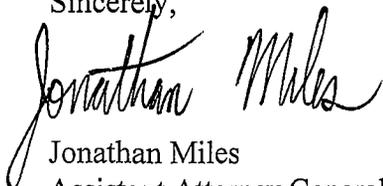
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The city must withhold the vehicle identification number you have marked under section 552.130 of the Government Code.

In summary, the city may withhold the information you have marked under section 552.101 in conjunction with the informer's privilege and the vehicle identification number you have marked 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/eeg

Ref: ID# 399295

Enc. Submitted documents

c: Requestor
(w/o enclosures)