



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2010

Mr. Loren B. Smith
Olson & Olson, L.L.P.
For City of Dickinson
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2010-18394

Dear Mr. Smith:

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# 402369.

The City of Dickinson (the "city"), which you represent, received a request for the audio and dispatch time and date of a specified call. You claim the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have submitted the entire dispatch report. The request only seeks the date and time of the specified call, which we have marked. Therefore, the remaining portions of the dispatch report you have submitted are not responsive to this request. This ruling does not address the public availability of non-responsive information, and the city is not required to release such information in response to this request.¹ As you raise no exceptions for the portion of the dispatch report listing the date and time of the specified call, this information must be released.

Next, we address your arguments against disclosure of the submitted audio recording. You claim the submitted audio recording is excepted from disclosure under section 552.101 of the Government Code in conjunction with the informer's privilege. Section 552.101 excepts

¹As we are able to make this determination, we need not address your arguments against disclosure of this information.

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 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 8 John H. Wigmore, Evidence in Trials at Common Law, § 2374, at 767 (J. 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 state the submitted audio recordings contain the identifying information of a complainant who reported possible violations of the Penal Code to the city's police department. However, we note in this instance, the request for information reveals the requestor knows the identity of the complainant whose identity you seek to withhold. Accordingly, we find you have failed to establish the informer's privilege is applicable to the information at issue, and the city may not withhold any portion of the submitted audio recordings under section 552.101 on that basis.

Next, you assert the submitted audio recordings contain license plate numbers that are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle title or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). Upon review, we agree that the license plate number that is not the requestor's in the first audio recording must be withheld under section 552.130. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). In this instance, you state the city does not possess the technological capability to redact individual portions of the submitted recordings. Thus, we agree the city must withhold the entire first recording to prevent the disclosure of information that is confidential under section 552.130 of the Government Code. *See Open Records Decision No. 364 (1983)*. However, we find the second recording does not contain any Texas motor vehicle information subject to section 552.130 of the Government Code. Therefore, the second recording may not be withheld under section 552.130.

In summary, the city must withhold the first audio recording under section 552.130 of the Government Code. The remaining responsive 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 402369

Enc. Submitted documents

c: Requestor
(w/o enclosures)