ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2011

Ms. Jill Hoffman
Bojorquez Law Firm, P.L.L.C.
12325 Hymeadow Drive, Suite 2-100
Austin, Texas 78750

OR2011-04695

Dear Ms. Hoffman:

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# 413623.

The City of Nolanville and the Nolanville Police Department (collectively, the "city"), which you represent, received a request for records pertaining to complaints against the city's former police chief or police department during a specified time period. You claim 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 representative sample of information.[2]

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

[1]Although you initially raised section 552.108 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you have withdrawn this exception. *See* Gov't Code §§ 552.301, .302. Furthermore, although you also raise section 552.305 of the Government Code, we note this section is not an exception to disclosure under the Act; rather, it is a procedural provision permitting a governmental body to decline to release information that may implicate a person's privacy or property interests for the purpose of requesting a decision from this office as provided under the Act. *See id.* § 552.305; Open Records Decision No. 542 (1990).

[2]We 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 those records contain substantially different types of information than that submitted to this office.

Code § 552.101. Section 552.101 encompasses the informer's privilege, which 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). The 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. Open Records Decision No. 515 at 3 (1988). 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 2 (1981) (citing 8 JOHN H. WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW, § 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). However, the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 at 1-2 (1978).

You raise the informer's privilege for a portion of the submitted information. However, you do not identify any individual in the information at issue who actually reported a violation of law. Further, you fail to inform this office of any specific criminal or civil statute the city believes to have been violated. We therefore conclude the city has failed to demonstrate the applicability of the common-law informer's privilege in this instance. Thus, the city may not withhold any of the information under section 552.101 of the Government Code in conjunction with the informer's privilege.

We also understand you to raise common-law privacy for a portion of the submitted information. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. 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. *See id.* at 683. We note, however, the names, addresses, and telephone numbers of members of the public are not excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 551 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). Upon review, we find no portion of the submitted information is highly intimate or embarrassing. Therefore, we conclude the city may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

We note a portion of the submitted information may be excepted under section 552.117 of the Government Code.[3] Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, social security number, and family member information regarding a peace officer regardless of whether the officer requested confidentiality under section 552.024 or 552.1175 of the Government Code.[4] Gov't Code § 552.117(a)(2). Accordingly, if the former police chief is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, the city must withhold the information we have marked under section 552.117(a)(2). If the former police chief is not a currently licensed peace officer, then section 552.117(a)(2) is not applicable; however, this information may be subject to section 552.117(a)(1).

Section 552.117(a)(1) of the Government Code makes confidential the same types of information covered by section 552.117(a)(2), but for current and former employees of governmental bodies who timely request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may withhold information under section 552.117(a)(1) on behalf of a former employee only if the employee made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Thus, if the former police chief timely elected to keep his personal information confidential, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The city may not withhold this information under section 552.117(a)(1) if the former police chief did not make a timely election to keep the information confidential.

In summary, if the former police chief is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the former police chief is not a currently licensed peace officer, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code if he timely elected to keep this personal information confidential. The city must release the remaining information.

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,

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

[4]"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

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,

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 413623

Enc. Submitted documents

c: Requestor
(w/o enclosures)