



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 18, 2011

Mr. George Staples  
Taylor Olson Adkins Sralla Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2011-05321

Dear Mr. Staples:

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# 415223 (OR 2011-016).

The City of North Richland Hills (the "city"), which you represent, received a request for code or building violations pertaining to a specified address.<sup>1</sup> You claim that portions of the submitted information are 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.

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. Section 552.101 encompasses information protected by 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 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

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<sup>1</sup>You state, and provide documentation reflecting, that the city sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). 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). The informer’s privilege protects the content of the communication only to the extent that it identifies the informant. See Open Records Decision No. 549 at 5 (1990).

You state the submitted information is related to complaints of alleged violations of section 118-13 of the North Richland Hills City Code. You indicate that such violations are punishable as misdemeanors and carry penalties not to exceed \$2,000. You do not indicate, nor does it appear, the subject of the complaints knows the identity of the complainants. Therefore, based on your representations and our review of the submitted information, we conclude the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the informer’s privilege. However, we find the remaining information you have marked does not identify an informer. Thus, we conclude the city may not withhold any of the remaining information under section 552.101 in conjunction with the informer’s privilege.

Section 552.101 of the Government Code 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, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is intimate and embarrassing and of no legitimate public interest. See Open Records Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state. See Gov’t Code § 552.130(a)(1)-(2). You have marked the information you seek to withhold pursuant to section 552.130, which includes information pertaining to the requestor. We note that section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own Texas motor vehicle record information under section 552.023 of the Government Code, and the city may not withhold it from her under section 552.130. See *id.* § 552.023(a)-(b) (governmental body may not

deny access to person to whom information relates, or that person's representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or individual's authorized representative requests information concerning the individual). Thus, the city must withhold only the information we have marked under section 552.130 of the Government Code.<sup>2</sup>

In summary, the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. The remaining information must be released to the requestor.<sup>3</sup>

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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/tf

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<sup>2</sup>We note this office 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 and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</sup>We note the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023. Thus, if the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.

Ref: ID# 415223

Enc. Submitted documents

c: Requestor  
(w/o enclosures)