



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2011

Mr. Jeffrey L. Moore
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2011-08905

Dear Mr. Moore:

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# 421390.

The City of the Colony (the "city"), which you represent, received a request for information pertaining to complaints against a specified property.¹ You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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." Govt Code § 552.101. This exception encompasses information protected by the common-law informers 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 informers privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informers identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informers 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

¹We note that the city asked for and received clarification regarding this request. *See* Govt Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

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. The privilege excepts an informers statement only to the extent necessary to protect the informers identity. See Open Records Decision No. 549 at 5 (1990).

You state the information you have marked identifies individuals who reported alleged violations of city zoning codes to the city's Housing and Development Services Department (the "department"). You inform us that the department is charged with enforcement of these violations. We note, however, the submitted information pertains to a complaint filed with a city council member, not the department, who then forwarded the complaint to the city manager and city staff. As you have not explained how the city council member has a duty of inspection or of law enforcement concerning the complaint, we find the city may not withhold any of the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informers privilege.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code.² Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). 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). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. We have marked the personal information of a city official. If the city official whose personal information is at issue made a timely election under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1). If the city official did not make a timely election under section 552.024, this information may not be withheld under section 552.117(a)(1).

We note some of the remaining information consists of personal e-mail addresses subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Govt Code § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail addresses we have

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

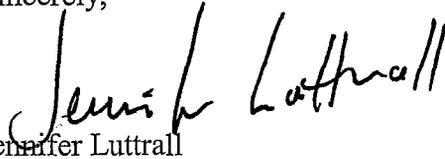
marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their disclosure.³

In summary, if the city official whose personal information we have marked made a timely election under section 552.024 of the Government Code, the city must withhold the marked information under section 552.117(a)(1) of the Government Code. The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their disclosure. 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 Generals 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 421390

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note Open Records Decision No. 684 (2009) was issued as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.