



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2011

Mr. B. Chase Griffith
Counsel to the Town of Flower Mound
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2011-09494

Dear Mr. Griffith:

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# 422656.

The Town of Flower Mound (the "town"), which you represent, received a request for information concerning complaints and code violations pertaining to a named individual and a specified address. You state the town has released some information to the requestor. You claim 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. The section encompasses the common law 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). It protects from disclosure 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. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). 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 (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 that informer's identity. Open Records Decision No. 549 at 5 (1990).

You claim that the submitted information contains identifying information of persons who reported possible violations of section 34-71 of the town's Code of Ordinances to the town's Code Enforcement Department. You state these alleged violations carry a criminal penalty. Upon review, we find the town may withhold the identifying information we have marked under section 552.101 based on the informer's privilege.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. Cf. *U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Common-law privacy also encompasses certain types of personal financial information. See Open Records Decision Nos. 545 (1990) (common-law privacy protects personal financial information not related to a financial transaction between an individual and a governmental body), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the town must generally withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We note, however, that the requestor may be the authorized representative of the named individual whose privacy interests are at issue in the submitted information. Accordingly, the requestor may have a special right of access to information that would ordinarily be withheld to protect the named individual's common-law privacy interests. See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy

principles). Therefore, if the requestor is the authorized representative of the named individual and has a special right of access to the information we have marked, then this information may not be withheld from him under section 552.101 in conjunction with common-law privacy. However, if the requestor does not have a special right of access, then the town must withhold the information we have marked pursuant to section 552.101 in conjunction with common-law privacy.

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 an agency of this state or another state or country is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). We note, however, section 552.130 protects privacy interests. As previously noted, the requestor may be an authorized representative of the named individual. Thus, the requestor may have a right of access under section 552.023 of the Government Code to the named individual's motor vehicle record information. Gov't Code § 552.023(b). If the requestor is an authorized representative of the named individual, then he has a right of access under section 552.023 to the named individual's motor vehicle record information and it may not be withheld from him under section 552.130. If the requestor is not an authorized representative of the named individual, then this information must be withheld under section 552.130. The town must withhold the remaining motor vehicle record information we have marked that does not pertain to the named individual under section 552.130.¹

In summary, the town may withhold the identifying information we have marked under section 552.101 of the Government Code based on the informer's privilege. If the requestor is the authorized representative of the named individual and has a special right of access to the named individual's 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, then this information may not be withheld from the requestor on those bases.² However, if the requestor does not have a special right of access, then the town must withhold the named individual's 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. In either instance, the town must withhold the remaining Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

¹We 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 numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

²In this instance, we note the requestor has a special right of access under section 552.023 of the Government Code to some of the information being released. Accordingly, if the town should receive another request for this information from someone without such a right of access, the town should again request an opinion from this office.

As you raise no further exceptions to disclosure, the town must release the remaining information to the requestor.³

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bs

³We note the remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b). We note, however, the remaining information contains the named individual's social security number, which the town would ordinarily be able to withhold under section 552.147 of the Government Code. Because section 552.147 protects personal privacy interests and because, as previously noted, the requestor may be the authorized representative of the named individual, the requestor may have a right of access under section 552.023 to the named individual's social security number. *Id.* § 552.023(b). If the requestor is an authorized representative of the named individual, then he has a right of access under section 552.023 of the Government Code to the named individual's social security number, and it may not be withheld from him under section 552.147. If the requestor is not an authorized representative of the named individual, we note the town may withhold it under section 552.147(b). In the future, if the town receives another request for these same records from a person other than one with a right of access under section 552.023, the town is authorized to withhold the named individual's social security number under section 552.147(b) without the necessity of requesting an attorney general decision.

Ref: ID# 422656

Enc. Submitted documents

c: Requestor
(w/o enclosures)