



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2011

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-16030

Dear Ms. Evans:

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# 434896 (GC No. 18880).

The City of Houston (the "city") received a request for several categories of information related to "the proposed ordinance 8-22 for [w]recker, towing, storage, and paint and body shops[.]" You state the city will make a portion of the responsive information available to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.106 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note Exhibit 3 includes an agenda of a public meeting. The agendas of a governmental body's public meetings are specifically made public under the Open Meetings Act, chapter 551 of the Government Code. *See* Gov't Code § 551.041 (governmental body shall give written notice of date, hour, place, and subject of each meeting). Although you assert this information is excepted under section 552.106, as a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the submitted agenda be must be released in accordance with the Open Meetings Act.

Next, 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 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). 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 (1988), 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 explain that the information you have marked in Exhibit 2 identifies individuals who reported alleged violations of title 14 of the Texas Occupations Code to the Houston Police Department's Auto Dealers Detail (the "detail"). You explain also that the detail is authorized to enforce the laws that allegedly were violated. You inform us that a violation of these laws is punishable by administrative, civil, and criminal penalties. You indicate the subjects of the complaints do not know the identity of the informers. Based on your representations, we conclude that the city may withhold the information we have marked in Exhibit 2 under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find the remaining information at issue, including a post office box number, either does not identify an informer or you have not explained, nor does the submitted documentation reflect, how the complaint at issue is an alleged violation of law. Accordingly, the city may not withhold any of the remaining information at issue in Exhibit 2 under section 552.101 in conjunction with the informer's privilege.

Section 552.106 of the Government Code excepts from disclosure "[a] draft or working paper involved in the preparation of proposed legislation." Gov't Code § 552.106(a). Section 552.106(a) ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. *See Open Records Decision No. 460 at 1 (1987)*. The purpose of this exception is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body; therefore, section 552.106 encompasses only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation and does not except purely factual information from public disclosure. *Id.* at 2. This office has concluded that the drafts of municipal ordinances and resolutions which reflect policy judgments, recommendations, and proposals are excepted by section 552.106. *Open Records Decision No. 248 (1980)*.

You state the remaining information in Exhibit 3 includes drafts of a proposed municipal ordinance. You also state Exhibit 3 includes e-mails between the city and members of the public that are stakeholders and business owners who may be affected by the proposed regulations. You do not inform us that any of these members of the public had any official responsibility to provide legislative advice to the city. Likewise, you have not established that the city and these members of the public share a privity of interest or common deliberative process with respect to any potential city ordinance. We therefore conclude that the e-mails exchanged between the city and members of the public, including attached drafts of the ordinance, may not be withheld under section 552.106. We also find that you have not demonstrated how any of the remaining information constitutes recommendations, opinions, or advice for purposes of section 552.106. We therefore conclude the city may not withhold any of the submitted information under section 552.106 of the Government Code.

We note some of the information in Exhibit 3 may be subject to section 552.117 of the Government Code.¹ Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. 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)(1)). We note that section 552.117 encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cellular phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for information. *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 information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. Therefore, the city must withhold the cellular telephone number we have marked in Exhibit 3 under section 552.117(a)(1) to the extent it is a personal cellular telephone number paid for with personal funds and the employee made a timely election. Otherwise, the city may not withhold this cellular telephone number under section 552.117.

We note some of the information in Exhibit 2 is subject to section 552.130 of the Government Code, which excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or another state or country. Act of

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)(2)). The city must withhold the motor vehicle record information we have marked in Exhibit 2 under section 552.130.

We note Exhibit 3 contains e-mail addresses that may be 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). Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs affirmatively consents to its public disclosure. *See id.* § 552.137(b). It appears some of the e-mail addresses at issue belong to agents of companies with contractual relationships with the city. *See id.* § 552.137(c)(1), (2). Because we are unable to discern whether the e-mail addresses we have marked fall within the scope of section 552.137(c), we must rule conditionally. To the extent the marked e-mail addresses belong to members of the public, the city must withhold the e-mail addresses under section 552.137, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release.² *See id.* § 552.137(b). However, to the extent the marked e-mail addresses belong to agents of companies with contractual relationships with the city, the e-mail addresses may not be withheld under section 552.137 of the Government Code.

In summary, the city may withhold the information we have marked in Exhibit 2 under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must withhold the cellular telephone number we have marked in Exhibit 3 under section 552.117(a)(1) of the Government Code to the extent it is a personal cellular telephone number paid for with personal funds and the employee made a timely election. Otherwise, the city may not withhold this cellular telephone number under section 552.117(a)(1). The city must withhold the motor vehicle information we have marked in Exhibit 2 under section 552.130 of the Government Code and the e-mail addresses we have marked in Exhibit 3 under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release or the e-mail addresses belong to agents of companies with contractual relationships with the city. The city must release the remaining submitted information.

²We 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 a Texas license plate number under section 552.130 of the Government Code and a personal e-mail address under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in cursive script that reads "Tamara H. Holland".

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ag

Ref: ID# 434896

Enc. Submitted documents

c: Requestor
(w/o enclosures)