



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 8, 2011

Chief Rick Waller  
Chief of Police  
Whitehouse Police Department  
P.O. Box 776  
Whitehouse, Texas 75791-0776

OR2011-16395

Dear Chief Waller:

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# 435802.

The Whitehouse Police Department (the "department") received four requests from the same requestor for any records regarding four specified citations. You claim the submitted information is 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." 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); *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, provided 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.

You represent the submitted information identifies complainants who reported violations of a City of Whitehouse (the “city”) animal noise ordinance to the department. In this instance, the submitted information reflects that the department has the authority to enforce this ordinance and that violations of the ordinance are punishable with civil penalties. You do not inform us that the subjects of the complaints know the identity of the complainants. Based on your representations and our review, we conclude the information we have marked identifies complainants who reported possible violations of the city’s animal noise ordinance. Thus, the department may withhold this information under section 552.101 in conjunction with the common-law informer’s privilege.

We note that portions of the remaining information may be excepted from disclosure under section 552.130(a)(1) of the Government Code.<sup>1</sup> This section provides that information relating to a motor vehicle operator’s license or driver’s license issued by a Texas agency, or an agency of 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(a)(1)). Upon review, we have marked the driver’s license information that is subject to section 552.130(a)(1). We note, however, the information we have marked belongs to the requestor’s spouse, and the requestor in this instance may be acting as his spouse’s authorized representative. Under section 552.023 of the Government Code, a person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (governmental body may not deny access to whom information relates or person’s authorized representative on grounds that information is considered confidential by privacy principles). Therefore, because section 552.130 protects personal privacy, if the requestor is acting as his spouse’s authorized representative, then he has a right of access under section 552.023 to his spouse’s driver’s license information. In such case, the marked information may not be withheld from him under section 552.130(a)(1). However, if the requestor is not acting as the authorized representative of his spouse, then the department must withhold the marked information under section 552.130(a)(1).

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. If the requestor is acting as his spouse’s authorized representative, the information

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<sup>1</sup>The 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).

we marked under section 552.130(a)(1) of the Government Code may not be withheld from the requestor under this section. However, if the requestor is not acting as the authorized representative of his spouse, then the department must withhold the marked information under section 552.130(a)(1) of the Government Code. The remaining information must be released.<sup>2</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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/agn

Ref: ID# 435802

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note that the information being released contains the social security numbers of the requestor and his spouse. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b). However, because section 552.147 protects personal privacy, the requestor has a right of access to his own social security number and that of his spouse if he is acting as her authorized representative. *See* Gov't Code § 552.023; ORD 481 at 4.