



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 5, 2012

Ms. Michelle M. Kretz  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2012-14038

Dear Ms. Kretz:

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# 463991 (City of Fort Worth PIR No. W017786).

The City of Fort Worth (the "city") received a request for requests for certain city services made during a specified time period.<sup>1</sup> You state you will release most of the requested information. You state the city has redacted driver's license and access device numbers pursuant to sections 552.130(c) and 552.136(c) of the Government Code and Texas license plate numbers pursuant to the previous determination issued under section 552.130(a)(2) of the Government Code in Open Records Decision No. 684 (2009).<sup>2</sup> You claim some of the

---

<sup>1</sup>You state the city sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a 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).

<sup>2</sup>Section 552.130(c) of the Government Code authorizes a governmental body to redact the driver's license and personal identification information described in subsections 552.130(a)(1) and (a)(3) without the necessity of requesting a decision from this office. *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general, and governmental body withholding information pursuant to section 552.130(c) must provide notice to requestor). Section 552.136(c) of the Government Code authorizes a governmental body to redact access device numbers subject to section 552.136(b) without requesting a decision. *See id.* § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general, and governmental body withholding information pursuant to section 552.136(c) must provide notice to requestor). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without requesting a decision, including a Texas license plate number under section 552.130 of the Government Code.

submitted information is excepted from disclosure pursuant to sections 552.101 and 552.137 of the Government Code.<sup>3</sup> 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. This section incorporates the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *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 satisfied. *Id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982). We note the names, addresses, and telephone numbers, of members of the public are generally not highly intimate or embarrassing. See Open Records Decision Nos. 551 at 3 (1990) (disclosure of person’s name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses, telephone numbers, dates of birth not protected under privacy). In addition, 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) (when considering prong regarding individual’s privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one’s own criminal history). However, active warrant information or other information relating to an individual’s current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. See Gov’t Code § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system).

Upon review, we find some of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However,

---

<sup>3</sup>We note you also claim the informer’s privilege under Texas Rule of Evidence 508. The Texas Supreme Court has held the Texas Rules of Evidence are “other law” within the meaning of section 552.022 of the Government Code. See *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); see also Gov’t Code § 552.022(a). In this instance, section 552.022 is not applicable to the information you seek to withhold under the informer’s privilege and, therefore, we do not address your argument under rule 508.

we find the city has failed to demonstrate how any of the information it has marked is highly intimate or embarrassing information pertaining to an identified individual. Therefore, the city may not withhold any of the information it has marked under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also 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 state the information you have marked reveals the identity of complainants who made reports of possible city code violations to city staff members charged with the enforcement of the city code. However, you have not identified any specific law alleged to have been violated, nor have you explained whether any alleged violation carries civil or criminal penalties. Accordingly, the city has failed to demonstrate the informer's privilege is applicable to any of the information at issue. Thus, we conclude the city may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with the informer's privilege.

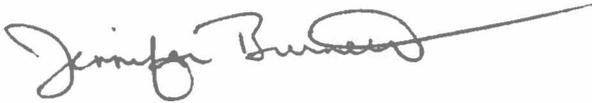
Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail addresses you have marked are not a type specifically excluded by section 552.137(c). Accordingly, the city must withhold these e-mail addresses under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release under section 552.137(b).

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release under section 552.137(b). The city must release the remaining information.

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,

A handwritten signature in black ink, appearing to read "Jennifer Burnett", with a long horizontal flourish extending to the right.

Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/tch

Ref: ID# 463991

Enc. Submitted documents

c: Requestor  
(w/o enclosures)