



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2012

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2012-16946

Dear Mr. Bounds:

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# 468564 (City File No. 566).

The City of Corpus Christi (the "city") received a request for comments submitted on the Mayor's Comment Form web page since the mayor took office.¹ You state the city has redacted personal information pursuant to section 552.024 of the Government Code and personal e-mail addresses under section 552.137 pursuant to Open Records Decision No. 684 (2009).² You state the city is making some of the requested information available to the requestor but claim some of 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.

¹The requestor narrowed her initial request for information.

²Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an email address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses 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). 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 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. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Some of the submitted information is highly intimate or embarrassing and is not of legitimate concern to the public. Therefore, the city must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy. Upon review, however, we find the remaining information is not highly intimate or embarrassing. Therefore, the remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

Section 552.101 also encompasses the 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. See Open Records Decision No. 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 1-2 (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 (1988). 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 seek to withhold the identities of individuals who reported possible violations of various state laws and city ordinances on the Mayor’s Comment Form, which is located on the city’s official web site. You assert the mayor “has a duty of inspection or of law enforcement within his particular sphere” and “he is responsible for investigating these types of violations and/or seeing that they are properly investigated.” Specifically, you explain the mayor is

responsible for enforcing all laws and ordinances and that he, as well as all officers of the city, "are imbued with the authority by City Charter to see that all laws and ordinances are investigated and enforced" and that the mayor "is ultimately responsible for and maintains the duty to insure that [on-the-ground] inspection and/or law enforcement actually occurs on behalf of the [c]ity's citizens." You also explain the laws and ordinances at issue carry civil or criminal penalties. Having examined these provisions, your arguments, and the documents at issue, we conclude the city may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.117 of the Government Code is applicable to some of the submitted information.³ Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.⁴ Gov't Code § 552.117(a)(2). The submitted information contains information pertaining to a peace officer who is deceased. Because the protection afforded by section 552.117 includes "current or former" officials or employees, the protection generally does not lapse at death, as it is also intended to protect the privacy of the employee's family members. Accordingly, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

To conclude, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and under section 552.117(a)(2) of the Government Code. The city may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. 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.

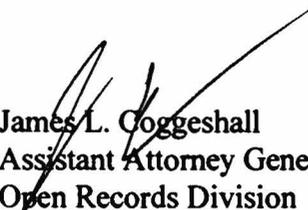
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php.

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); see, e.g., Open Records Decision No. 470 at 2 (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

⁴"Peace officer" is defined by article 2.12 of the Texas Code of Criminal Procedure.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 468564

Enc. Submitted documents

c: Requestor
(w/o enclosures)