



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 13, 2013

Ms. Laura Russell
Attorney
Texas Parks & Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

OR2013-02531

Dear Ms. Russell:

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# 478731.

The Texas Parks & Wildlife Department (the "department") received a request for all documents from a specified time period relating to the investigation of the requestor's client. You state the department has released most of the requested information. You 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.

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 encompasses the common-law informer's privilege, which Texas courts have long recognized. *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 (1998), 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 claim the information you have marked is protected by the common-law informer’s privilege. You explain this information identifies an individual who reported an alleged violation of Texas fish and game laws made to Texas Game Wardens who are charged with enforcing fish and game laws. The submitted information reveals that a violation of the law at issue is punishable by administrative and criminal penalties. You inform us that, to the department’s knowledge, the subject of the complaint does not know the identity of the informer. Based on your representations and our review, we conclude the department may withhold the informer’s identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, the remaining information you have marked does not contain identifying information of an informer. Thus, we conclude the department may not withhold any of the remaining information under section 552.101 in conjunction with the informer’s privilege.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center (the “NCIC”) or the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. See 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. See Open Records Decision No. 565 at 7 (1990). See generally Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in subchapter F of chapter 411 of the Government Code. See *id.* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. See *id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. See generally *id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with subchapter F of chapter 411 of the Government Code. Upon review, we find the information we have marked constitutes CHRI for purposes

of chapter 411. Accordingly, the department must withhold this information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.¹

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release.² *See id.* § 552.130(a)(1)-(2). Accordingly, the department must withhold the driver's license and motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department may withhold the informer's identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The department must withhold the driver's license and motor vehicle record information we have marked under section 552.130 of the Government Code. The department must release the remaining information.³

¹We note the requestor may obtain his client's CHRI from DPS. *See* Gov't Code § 411.083(b)(3).

²The 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).

³We note the remaining information contains the requestor's client's driver's license information, which is generally confidential under section 552.130(a)(1) of the Government Code, and the requestor's client's and another individual's social security numbers, which may generally be withheld under section 552.147 of the Government Code. However, because sections 552.130 and 552.147 protect personal privacy, the requestor has a right of access to his client's information under section 552.023 of the Government Code. *See generally* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). We note section 552.130(c) authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Additionally, we note section 552.147(b) 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 id.* § 552.147(b). Thus, if the department receives another request for this same information from a person who does not have such a right of access, sections 552.130(c) and 552.147(b) authorize the department to redact the requestor's driver's license information and social security number, respectively.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 478731

Enc. Submitted documents

c: Requestor
(w/o enclosures)