



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2014

Mr. C. Tyler Atkinson
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2014-06408

Dear Mr. Atkinson:

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# 519992 (PIR No. W031615).

The City of Fort Worth (the "city") received a request for information pertaining to a specified code complaint involving the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ 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 exception 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

¹We 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. Additionally, although you do not raise section 552.130 in your brief, we understand you to raise this exception based on your markings in the submitted information.

S.W.2d 724, 725 (Tex. Crim. App. 1928). The 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 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. 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 state the information you have marked reveals the identity of an individual who made a report of possible violations of section 6-13 of the Fort Worth City Code (the "code") to city staff members charged with the enforcement of the code. You explain violations of this section are punishable by a fine of up to \$2,000 per day per violation. You further explain, and provide documentation demonstrating, the city has no indication the subject of the complaint knows the identity of the informer at issue. Based upon your representations and our review, we conclude the city may withhold the identifying information you have marked under section 552.101 in conjunction with the common-law informer's privilege.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. See Gov't Code § 552.130(a)(1)-(2). We note section 552.130 protects privacy interests. In this instance, we are unable to determine whether the license plate number you have marked belongs to the requestor. As such, the requestor may have a right of access to this marked license plate number, and we must rule conditionally. See *id.* § 552.023(a) ("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."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, to the extent the requestor has a right of access under section 552.023 to the marked license plate number, the city must release this information to the requestor. To the extent the requestor does not have a right of access under section 552.023 to the license plate number you have marked, the city must withhold the marked license plate number under section 552.130 of the Government Code.

In summary, 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. To the extent the requestor does not have a right of access under section 552.023 to the license plate

number you have marked, the city must withhold the marked license plate number under section 552.130 of the Government Code. The remaining information must be released.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/akg

Ref: ID# 519992

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

