



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2014

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

OR2014-06963

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# 520877 (City of Fort Worth PIR No. W031779).

The City of Fort Worth (the "city") received a request for copies of complaints filed regarding the sale and distribution of raw milk from a specified address, as well as complaints filed regarding the number of dogs at the same specified address. You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.¹ 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.*

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.

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 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 report does not already know the informer's identity. Open Records Decision Nos. 515 at 2-3 (1988), 434 at 1-2 (1986), 208 at 1-2 (1978). The privilege protects the identities of individuals who report violations of statutes to criminal 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)). For the informer's privilege to apply, the report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at (1990), 515 at 3-4.

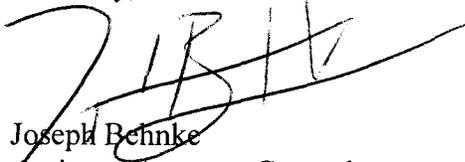
You assert portions of the submitted information reveal the identity of an individual who reported possible city code violations to the city. You state the city is responsible for enforcing city code violations, including the code violation involved in the reports at issue, and we understand that violations of the city code carry the penalty of a fine. You further state the city has no indication the subject of the complaints knows the identity of the informer at issue. Based on these representations, we conclude the city may withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find you have failed to demonstrate how the remaining information identifies a complainant for purposes of the informer's privilege. Accordingly, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. As you raise no other exceptions to disclosure, the city must release the remaining information.²

²We note the information being released includes the requestor's motor vehicle record information. The requestor has a right of access to this information that the city would be required to withhold from the general public under section 552.130 of the Government Code. See Gov't Code § 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 individual requests information concerning himself). We note section 552.130(c) of the Government Code 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). Thus, if the city receives another request for this same information from a person who would not have a right of access to the present individual's private information, section 552.130(c) authorizes the city to redact the individual's motor vehicle record 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.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,

A handwritten signature in black ink, appearing to read "JBH", is written over the typed name "Joseph Behnke".

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 520877

Enc. Submitted documents

c: Requestor
(w/o enclosures)