



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 11, 2014

Ms. Alisha Flanary
City Secretary
City of Riesel
P.O. Box 249
Riesel, Texas 76682

OR2014-22516

Dear Ms. Flanary:

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# 546467.

The Riesel Police Department (the "department") received a request for all information pertaining to a specified incident, including the in-car video during a specified time period, a camera recording during a specified time period worn by a named officer, the incident report, and text messages and call information during a specified time period. You state you do not have information responsive to a portion of the request.¹ You state some information was released to the requestor. You claim 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.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they were created outside the specified time period. The department need not release nonresponsive information in response to this request, and this ruling will not address that information.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 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).

You state the submitted information reveals the identity of a person furnishing information of a possible violation of the law to the department. You do not indicate, nor does it appear, the subjects of the complaint know the identity of the informer. Based on your representations and our review, we conclude the department may withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we indicated in the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information may be subject to sections 552.130 and 552.1175 of the Government Code.² Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, title, or

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1), (2). The department must withhold the information we indicated under section 552.130 of the Government Code.

Section 552.1175 of the Government Code applies to information the department does not hold in an employment context, and provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure; [and]

...

(3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175. Section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6. Some of the remaining information, which we have indicated, pertains to peace officers and an employee of the Texas Department of Criminal Justice. Accordingly, if the individuals at issue elect to restrict access to the information we have indicated in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code; however, the cellular telephone number may only be withheld under section 552.1175 if a governmental body does not pay for the cellular telephone service. Conversely, if the individuals at issue do not elect to restrict access to their information in accordance with section 552.1175(b), the indicated information may not be withheld under section 552.1175.

In summary, the department may withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with the common-law informer's

privilege. The department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we indicated under section 552.130 of the Government Code. If the individuals at issue elect to restrict access to the information we have indicated in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code; however, the cellular telephone number may only be withheld under section 552.1175 if a governmental body does not pay for the cellular telephone service. The department must release the remaining information.³

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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 546467

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a special right of access to some of the information being released. See Gov't Code § 552.023 (person or person's 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 requests information concerning himself).