



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 18, 2014

Mr. Michael L. Garza  
Assistant District Attorney  
Criminal District Attorney's Office  
Hidalgo County  
100 North Closner, Room 303  
Edinburg, Texas 78539

OR2014-22972

Dear Mr. Garza:

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# 547482 (Ref. No. 2014-0126-DA).

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for information pertaining to payments made from the sheriff's office's forfeiture account during a specified time period. You state you will release some of the requested information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the sheriff's office has redacted portions of the submitted information. You do not assert, nor does our review of the records indicate, you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the sheriff's office should refrain from redacting any information that it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information includes information in an account, voucher, or contract relating to the receipt or expenditure of funds by a governmental body that is subject to section 552.022(a)(3). The sheriff's office must release this information pursuant to section 552.022(a)(3), unless it is made confidential under the Act or other law. Although the sheriff's office seeks to withhold some of this information under section 552.108 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Accordingly, the sheriff's office may not withhold the information at issue under section 552.108. The sheriff's office also claims the information at issue is protected from disclosure under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The common-law informer's privilege is other law for the purpose of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001); *Tex. Comm'n on Envtl. Quality v. Abbot*, No. GV-300417 (126th Dist. Ct., Travis County, Tex.). Thus, we will address your assertion of section 552.101 of the Government Code in conjunction with the informer's privilege.

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. 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 the subject of the report does not already know their identities. Open Records Decision Nos. 515 at 2-3 (1988), 434 at 1-2 (1986), 208 at 1-2 (1978). 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. The privilege affords protection to 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)).

You assert the information at issue reveals the identity of a confidential informant for the Federal Bureau of Investigation (“FBI”) who reported criminal violations to the sheriff’s office that resulted in the seizure of money and a vehicle. There is no indication the subject of the investigation knows the identity of this individual. Based on these representations and our review, we conclude the sheriff’s office may withhold the identifying information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, we find you have failed to demonstrate the remaining information at issue consists of identifying information of an informer for purposes of the informer’s privilege. Therefore, the sheriff’s office may not withhold any of the remaining information at issue under section 552.101 of the Government Code on this basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>1</sup> See Gov’t Code § 552.130. Accordingly, the sheriff’s office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the sheriff’s office may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. The sheriff’s office must withhold the motor vehicle record information we have marked 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/>

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<sup>1</sup>The 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).

[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 'Meredith L. Coffman', with a long, sweeping flourish extending to the right.

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/dls

Ref: ID# 547482

Enc. Submitted documents

c: Requestor  
(w/o enclosures)