



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 16, 1998

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR98-2211

Dear Ms. Sims:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117997.

The City of Lubbock (the "city") received a request for "complaints against American Embassy Lim., any public records concerning this company. Past 3 ½ years." You state that the city has released portions of the requested information. You assert that certain portions of the requested information are excepted from disclosure based on sections 552.101 and 552.107(1) of the Government Code. You also suggest that the release of portions of the requested information may implicate the privacy or property interests of a third party. You have submitted to this office a representative sample of the information the city seeks to withhold from disclosure.¹

Section 552.101 of the Government Code excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception incorporates the "informer's privilege." The privilege, as interpreted by the attorney general, protects from disclosure the identity of a person who reports a violation of the law to officials charged with the duty of enforcing the particular law. The privilege does not protect the identity of a person who has reported conduct that may be illegal when the person does not consider the conduct to be illegal. Open Records

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Decision No. 579 (1990). The informer's privilege protects not only the informer's identity, but also any portion of the informer's statement that might tend to reveal the informer's identity. The privilege does not apply if the subject of the information already knows the informer's identity. *See* Open Records Decision No. 515 (1988).

You assert that the privilege protects the identity of individuals who have filed complaints against the American- Embassy Limousine Service, Inc. (the "company"). You explain that the city issues permits to companies to conduct a limousine business. You also state that if a company has violated the city's limousine ordinances, the complaint, which is a class C misdemeanor, is referred to the police.

We agree that the identity of an individual who reports that the company has violated the city's limousine ordinances is generally within the privilege. *See* Open Records Decision Nos. 296 (1981), 279 (1981). One of the submitted complaints appears to be a report of an alleged parking violation. We believe the identity of the individual who reported the parking violation is similarly generally within the privilege. However, you have not explained how the identity of an individual who reports that the company has allegedly not performed on a contract constitutes a violation of a city ordinance. Thus, we conclude that the city may withhold the information at issue here that reveals the identity of an individual who reports a violation of a city ordinance.

Section 552.101 also applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

The common-law right to privacy generally protects from public disclosure background financial information about an individual. *See* Open Records Decision No. 373 (1983). However, companies and corporations do not have a right of privacy. Open Records Decision No. 620 (1993). The submitted information includes private financial information that the city must withhold from disclosure to protect the common-law privacy rights of the individuals concerned. Gov't Code § 552.101. We have marked the private information. However, the common-law right to privacy does not apply to the company's financial information. Moreover, this office notified the company of this request in order to provide the company an opportunity to assert any proprietary interest in the information. *See* Gov't Code § 552.305, Open Records Decision No. 542 (1990). The company did not respond to our notification. Thus, the city may not withhold from disclosure information that pertains to the company.

The information also contains social security numbers. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Open Records Act on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

The information includes copies of driver's licenses and chauffeur's licenses as well as driver's license numbers, VIN numbers and license plate numbers. The city must withhold this information pursuant to section 552.130 of the Government Code.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/mjc

Ref.: ID# 117997

Enclosures: Submitted documents

cc: Mr. Albert Jason Heckler III
8217 Valencia
Lubbock, Texas 79424
(w/o enclosures)