



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 20, 2006

Ms. Wendy E. Ogden  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2006-10985A

Dear Ms. Ogden:

This office issued Open Records Letter No. 2006-10985 (2006) on September 21, 2006. You informed our office that you received the request for information on July 6, 2006. Therefore, the city was required to submit the requested information for our review by July 27, 2006. When the city submitted the requested information for our review, however, the envelope submitted by the city bore a post office cancellation mark of July 28, 2006. Based on this information, we concluded that the city failed to meet its procedural requirements under section 552.301 of the Government Code and waived its claim under section 552.101 of the Government Code in conjunction with the common law informer's privilege. You have since submitted to this office a certified mail receipt indicating that the city deposited the mail at issue with the United States Postal Service on July 27, 2006. When this office determines that an error was made in the decision process under sections 552.301 and 552.306 of the Government Code, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on September 21, 2006. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act"))).

You ask whether certain information is subject to required public disclosure under the Act, chapter 552 of the Government Code. Your request was assigned ID# 259922.

The City of Corpus Christi (the "city") received a request for six categories of information pertaining to the city's Animal Care Services Department and several named individuals. You state that the city will release some information to the requestor. You claim that the remaining requested information is excepted from disclosure under

sections 552.101, 552.117, and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us that the information submitted as Exhibit F was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2006-09380 (2006). Therefore, assuming that the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, we conclude that the city must continue to rely on our decision in Open Records Letter No. 2006-09380 with respect to the information that was previously ruled upon in that decision.<sup>2</sup>

The city asserts that a portion of the information in Exhibit A is excepted from disclosure under section 552.101 of the Government Code in conjunction with the informer's privilege. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The informer's privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts. *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). It protects from disclosure 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 information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1998), 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 2 (1981) *citing* Wigmore, Evidence, § 2374, at 767 (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 (1988). However, the informer's privilege protects the content of the communication only to the extent that it identifies the informant. *Roviaro v. United States*, 353 U.S. 53, 60 (1957).

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<sup>1</sup>Although the city raised section 552.111 of the Government Code as an exception to disclosure in its initial correspondence with this office, you have not submitted any arguments in support of withholding information under this exception, and you have not identified any information that you wish to withhold under this exception. Thus, we presume the city no longer asserts section 552.111 as an exception to disclosure. *See* Gov't Code §§ 552.301, .302.

<sup>2</sup>The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

You state that the complaint made in the submitted documents relates to a criminal violation which the city's employees at Animal Care Services are responsible for enforcing. You further provide documentation that the city code provides a criminal penalty for this violation. Based on this representation, the city may redact the identifying information that we have marked on the submitted documents pursuant to section 552.101 in conjunction with the common law informer's privilege.

Section 552.101 also encompasses the doctrine of common law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

This office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). But this office has found that the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we have marked the information that is confidential under common law privacy and that the city must withhold under section 552.101. The remaining information, however, is not confidential under common law privacy, and the city may not withhold it under section 552.101 on that ground.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state that the employees at issue elected to keep their personal information confidential. We note that you have not submitted a copy of the forms in which the employees at issue elected to keep this information confidential. Accordingly, the city must withhold the information we have marked under section 552.117 on behalf of these employees provided that they elected, pursuant to section 552.024, to keep this information confidential prior to the date on which the request for this information was made. The city may not withhold the marked information under section 552.117 if the employees at issue did not make timely elections to keep this information confidential.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov’t Code § 552.137(a)-(c). The e-mail addresses we have marked do not appear to be of a type specifically excluded by section 552.137(c). Therefore, the city must withhold the e-mail addresses we have marked under section 552.137.

In summary, the city must continue to rely on our decision in Open Records Letter No. 2006-09380 with respect to the information that was previously ruled upon in that decision. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common law informer’s privilege. The city must withhold the information we have marked under section 552.101 in conjunction with common law privacy. Provided that the employees at issue made timely elections pursuant to section 552.024, the city must withhold the information we have marked under section 552.117 of the Government Code. The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lisa V. Cubriel  
Assistant Attorney General  
Open Records Division

LVC/eb

Ref: ID# 259922

Enc. Submitted documents

c: Ms. Susan Thiem  
96 Lakeshore Drive  
Corpus Christi, Texas 78413  
(w/o enclosures)