ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2007

Mr. John S. Schneider, Jr.
First Assistant City Attorney
City of Pasadena
P.O. Box 672
Pasadena, Texas 77501-0672

OR2007-12298

Dear Mr. Schneider:

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# 289555.

The City of Pasadena (the "city") received a request for nine categories of information related to a specified dog bite incident. You state that you will provide some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the city failed to follow its procedural obligations under section 552.301 of the Government Code. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to

[1] Although you initially raise sections 552.102, 552.103, and 552.108 of the Government Code, you have not submitted arguments explaining how these exceptions apply to the submitted information. *See* Gov't Code § 552.301(e)(1) (governmental body must explain applicability of raised exceptions). Therefore, we assume the city has withdrawn its claims under these sections. *See id.* §§ 552.301, .302.

the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). Section 552.301(e) then requires that the governmental body submit comments explaining how the stated exceptions apply no later than the fifteenth business day after receiving the request. *Id.* § 552.301(e)(1)(A). The city states that it received the request for information on June 29, 2007. Accordingly, the city's ten business day deadline was July 16, 2007, and the fifteen business day deadline was July 23, 2007. Although the city timely requested a ruling from this office, it did not claim the applicability of section 552.137 until July 23, 2007. Consequently, the city failed to timely raise this exception. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302). Nevertheless, because section 552.137 is a compelling reason to withhold information, we will determine whether the exception applies to the submitted information along with your timely asserted claim under section 552.101.

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 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 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 (1988), 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, witnesses who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer's privilege. Additionally, the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (1978).

You claim the submitted information identifies an individual who reported an alleged violation of a city ordinance. You note that a violation of the ordinance is a misdemeanor offense. Based on your representations and our review, we agree that the information identifying the complainant in this case would generally be protected under the informer's privilege. In this instance, however, the submitted information shows that the subject of the complaint knows the identity of the complainant. Thus, the complainant's information may not be withheld pursuant to section 552.101 in conjunction with the informer's privilege.

We note that the remaining information at issue consists of statements made by the responding animal control officer and witnesses who provided information in the course of an investigation, but who did not report the alleged city ordinance violations. These individuals are not informants for the purpose of the informer's privilege. Therefore, none of the submitted information may be withheld pursuant to section 552.101 and the informer's privilege.

Next, we note that some of the submitted information may be protected under section 552.117 of the Government Code.[2] Section 552.117(a)(1) 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. *See* Gov't Code § 552.117(a)(1). However, information subject to section 552.117(a)(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). We have marked information that may be subject to section 552.117. Thus, if the employee at issue timely elected to keep his personal information confidential, you must withhold this marked information under section 552.117(a)(1) of the Government Code. The city may not withhold this information under section 552.117(a)(1) if the employee at issue did not make a timely election.

We also note that portions of the remaining information are subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. We note that section 552.130 does not apply to out-of-state motor vehicle record information. Accordingly, the city must withhold the Texas driver's license number we have marked pursuant to section 552.130 of the Government Code.

Section 552.137 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. *See id.* § 552.137(a)-(c). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an Internet website address. We note that the purpose of section 552.137 is to protect the privacy interests of individuals, and because the right of privacy lapses at death, the e-mail address of a deceased individual may not be withheld under section 552.137. *See Moore v. Charles B. Pierce Film*

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

Enters. Inc., 589 S.W.2d 489, 491 (Tex. App—Texarkana 1979, writ ref'd n.r.e.) (Texas does not recognize relational or derivative right of privacy). Furthermore, the submitted documentation reflects that the requestor is an attorney representing the complainant. Therefore, the requestor has a right of access to the complainant's information pursuant to section 552.023 of the Government Code, and his client's e-mail address must be released to him. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). We have marked an e-mail address that is subject to section 552.137 of the Government Code. You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the city must withhold the e-mail address we have marked under section 552.137.

In summary, the city must withhold the information we have marked under section 552.117, if the employee at issue made a timely election for confidentiality. The city must withhold the Texas driver's license information we have marked pursuant to section 552.130. The city must withhold the e-mail address we have marked under section 552.137. The remaining submitted information must be released.[3]

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

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[3] We note that this information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. We note, however, that the requestor has a right of access to his client's social security number. *See generally* Gov't Code § 552.023(b).

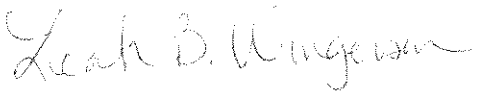
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 289555

Enc. Submitted documents

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