



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 20, 2008

Mr. C. Patrick Philips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2008-03727

Dear Mr. Phillips:

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# 305090.

The Fort Worth Police Department (the "department") received a request for information pertaining to a specified auto accident. You state that the department will withhold certain Texas motor vehicle record information pursuant to the previous determinations issued to the department in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code §552.301(a); Open Records Decision No. 673 at 7-8 (2001). You claim that some of 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, you note that the submitted information contains a CRB-3 report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* Here, the requestor has not provided the department with two of the required pieces of information. Thus, the department must

withhold the marked CRB-3 accident report under section 550.065(b) of the Transportation Code.

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 made confidential by common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release 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 (Tex. 1976). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision No. 545 (1990). The marked information constitutes personal financial information. Further, in this instance we find that there is not a legitimate public interest in the release of this information. Accordingly, you must withhold the marked financial information under section 552.101 in conjunction with common-law privacy.

Section 552.101 also 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). It protects from disclosure the identities of persons who report activities over which a 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). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You state that the marked information reveals the identity of an individual who reported an alleged misdemeanor hit and run offense. You state that the report was made to a department officer, and that this offense can result in a criminal penalty. You also indicate the identity of the reporting individual is not known by the subject of the complaint. Upon review of the submitted information and your arguments, we conclude that you may withhold a portion of the information that you have marked under section 552.101 in conjunction with the informer's privilege. However, you have failed to explain how the remaining information at issue constitutes the informer's identifying information. Thus, the informer's privilege is not applicable to the information that we have marked for release.

In summary, you must withhold the marked CRB-3 report under section 550.065 of the Transportation Code. You must withhold the information marked under section 552.101 in conjunction with common-law privacy and the informer's privilege. The remaining information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

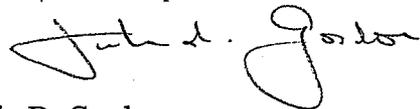
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in cursive script that reads "Justin D. Gordon". The signature is written in black ink and is positioned above the typed name.

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jh

Ref: ID# 305090

Enc. Submitted documents

c: Ms. Mary J. Sadousky
MetLife Auto & Home
P.O. Box 3608
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(w/o enclosures)