



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2008

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2008-10834

Dear Ms. Byles:

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# 318246.

The City of Fort Worth (the "city") received a request for all records relating to "fire, code, police and nuisance abatement[s]" for four specified apartment complexes. You state you will provide some of the requested information to the requestor with redactions made pursuant to section 552.147 of the Government Code.¹ You claim that the submitted complaint and abatement reports are excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹Section 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.

²We 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). 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.

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 laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from the DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Although you claim that portions of the submitted abatement action reports are excepted under chapter 411 of the Government Code, you have not identified, nor does the submitted information indicate, any information that was generated by the NCIC or TCIC. Accordingly, we find that you have not demonstrated how any portion of the submitted abatement action reports constitutes CHRI for purposes of chapter 411, and no portion of these reports may be withheld on this basis.

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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You claim the present request, in part, requires the city to compile the criminal history records of the individuals listed in the submitted abatement action reports. We note, however, that the request is for specific complaint and abatement records pertaining to specified addresses, not for all criminal

history records of named individuals. As such, we find the submitted abatement action reports do not constitute compilations of the individuals' criminal histories, and these reports may not be withheld under section 552.101 on this basis. We note, however, that the submitted abatement action reports contain the names of juvenile offenders. This office has also found that common-law privacy applies to the identifying information of juvenile offenders. *See* Open Records Decision No. 384 (1983); *cf.* Fam. Code § 58.007. Therefore, the city must withhold the juvenile offender names, which we have marked, in the abatement action reports under section 552.101 in conjunction with common-law privacy.

Section 552.101 also 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 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). 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).

You contend the submitted complaint reports reveal the identities of complainants who reported possible violations of the city code to the city's code enforcement personnel. You state violations of the code provisions in question are punishable by fines. Based on your representations and the submitted documentation, we conclude that the city may withhold the complainants' identifying information we have marked in the submitted complaint reports under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

You also contend the complainant names and telephone numbers in the abatement call reports are protected by the informer's privilege. You state the alleged criminal violations were reported to the city's police department. However, you have not provided sufficient arguments to demonstrate that the alleged offenders do not already know the identities of the persons who reported the alleged crimes. Thus, we find the city has not met its burden of adequately demonstrating the informer's privilege is applicable to the submitted abatement call reports. *See* Gov't Code § 552.301(e)(1)(A), Open Records Decision Nos. 542 (1990) (concluding that Act places on governmental body burden of establishing why and how exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). Consequently, the city may not withhold the complainants' names and telephone numbers in the submitted abatement call reports pursuant to section 552.101 in conjunction with the informer's privilege. As you have claimed no other exceptions to disclosure for this information, it must be released.

You claim the submitted complaint reports include an e-mail address that is subject to section 552.137 of the Government Code, which 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 address in the submitted complaint reports is not specifically excluded by section 552.137(c). As such, this e-mail address, which you have marked, must be withheld under section 552.137, unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b).

In summary, the city must withhold the juvenile offender names we have marked in the abatement action reports under section 552.101 in conjunction with common-law privacy. The city may withhold the complainants' identifying information we have marked in the complaint reports under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must withhold the e-mail address you have marked in the complaint reports under section 552.137 of the Government Code, unless the owner of the address has consented to its release. 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). If the governmental body does not file suit over 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).

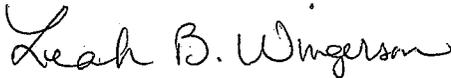
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/jh

Ref: ID# 318246

Enc. Submitted documents

c: Ms. Linda Claiborne
Executive Assistant
Encore Management Company
300 West Arbrook Boulevard, Suite B
Arlington, Texas 76014
(w/o enclosures)