



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 2, 2009

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773

OR2009-04340

Dear Ms. Smith:

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# 388705 (OR 09-0136).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified internal or criminal investigation. You state the department has released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the informer's privilege, which has long been recognized by Texas courts. *E.g.*, *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. *See* Open Records Decision No. 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 1-2 (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 (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. 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 submitted information contains identifying information of individuals who reported violations of the Controlled Substances Act, chapter 481 of the Health and Safety Code, to the department. Thus, based upon your representations and our review, we conclude that the informer's privilege is applicable to the informers' identifying information, which we have marked. However, we note that the remaining information does not consist of the identifying information of an informer. Therefore, the remaining information may not be withheld under section 552.101 in conjunction with the informer's privilege. Accordingly, the department may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. We note the submitted audio recording also contains the identifying information of informers. You state the department is unable to redact this information from the submitted recording. Therefore, based on your representation, the recording must be withheld in its entirety pursuant to section 552.101 in conjunction with the informer's privilege. *See* Open Records Decision No. 364 (1983).

Section 552.117(a)(2) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security number, and family member information regarding a peace officer regardless of whether the officer elected under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. *See* Gov't Code § 552.117(a)(2). In this instance, the requested information concerns an officer who is no longer employed by the department. Nevertheless, if the former officer is still a peace officer as defined by article 2.12, then the department must withhold the information we have marked pursuant to section 552.117(a)(2) of the Government Code.

If the former officer is no longer a peace officer, then the department may be required to withhold his personal information under section 552.117(a)(1). Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for

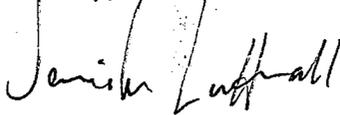
confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 that the information be kept confidential. Therefore, the department must withhold the information we have marked under section 552.117(a)(1) to the extent that the former officer timely requested confidentiality for that information under section 552.024.¹

In summary, the department may withhold the identifying information we have marked and the entirety of the audio recording under section 552.101 of the Government Code, in conjunction with the informer's privilege. The department must withhold the personal information of the former officer, which we have marked, under section 552.117(a)(2) of the Government Code if he is still a peace officer as defined by article 2.12 of the Code of Criminal Procedure. If the former officer is not a peace officer and he timely elected confidentiality, then the department must withhold his marked personal information under section 552.117(a)(1) of the Government Code. The remaining information must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

¹Regardless of the applicability of section 552.117, 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.

Ref: ID# 338705

Enc. Submitted documents

c: Requestor
(w/o enclosures)