



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2009

Mr. Richard Bilbie
Assistant City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2009-09422

Dear Mr. Bilbie:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 348456.

The City of Harlingen (the "city") received a request for a letter submitted to Israel Gonzalez mentioning the requestor's name. The city asserts the information is excepted from disclosure under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Texas courts have recognized the informer's privilege. *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 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). 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).

The city states the complainant alleged possible abuse or stalking, which are violations of sections 42.01 and 42.072 of the Penal Code, respectively. *See* Penal Code §§ 42.01(a)(4) (disorderly conduct offense committed by knowingly abusing person in public place in obviously offensive manner), 42.072 (stalking). Thus, we conclude the city may withhold the complainant's identifying information we marked under section 552.101 in conjunction with the informer's privilege.

Next, the city asserts constitutional privacy protects the information from disclosure. Section 552.101 encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the remaining information, we conclude none of it is protected under constitutional privacy.

Lastly, the city asserts the remaining information is confidential under section 58.007(j)(1) of the Family Code. Section 552.101 also encompasses confidentiality statutes. Law enforcement records relating to juveniles engaging in delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007(c). Fam. Code § 58.007(c). Section 58.007(j)(1) states:

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child[.]

Id. § 58.007(j)(1). In order for section 58.007(c) to apply, a child must be identified in the information at issue as a suspect or offender. Section 58.007(j)(1) requires the redaction of juvenile identifying information found in records subject to section 58.007(c), not wherever such information may be found. Here, the requested letter is not a record subject to section 58.007(c) because it is not a law enforcement record relating to juveniles engaging in delinquent conduct or conduct indicating a need for supervision. Moreover, the remaining information does not contain the identifying information of any juveniles. Thus, the city may not withhold the remaining information under section 58.007(j)(1) of the Family Code.

In summary, the city may withhold the complainant's identifying information we marked under the informer's privilege. The city must release the remainder.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 348456

Enc: Marked documents

c: Requestor
(w/o enclosures)