



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 28, 2009

Ms. Samantha Friedman
Assistant City Attorney for the City of Bastrop
Law Offices of JC Brown PC
1411 West Avenue, Suite 100
Austin, Texas 78701

OR2009-15327

Dear Ms. Friedman:

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# 359640.

The Bastrop Police Department (the "department") received a request for incident report number 09-08-1060. You claim the information you marked is 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 report.

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. This exception 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). 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). 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 you wish to withhold the identities of the individual(s) who reported an assault to a police officer. However, none of the individuals whose information you marked reported an assault. Accordingly, we find you have failed to demonstrate that the informer's privilege is applicable to the information you marked. Thus, we conclude the department may not withhold the marked portions of the submitted witness statements under section 552.101 of the Government Code in conjunction with the informer's privilege.

You also state some of the submitted information is subject to section 552.117(a)(1), which excepts from disclosure the current and former 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. Gov't Code § 552.117(a)(1). However, section 552.117(a)(1) only protects a current or former official's information in the context of his or her role as an official of the governmental body and not as a suspect, defendant, complainant, victim, or witness in a criminal investigation. *See generally id.* §§ 552.024 (allowing employees and officials of governmental body to elect to withhold enumerated categories of information held by governmental body in its capacity as employer), .117(a)(1) (exception is subject to proper election under section 552.024). Because the department holds the former official's information in the context of his role as a witness, section 552.117 is inapplicable in this instance.

The remaining information contains Texas driver's license numbers subject to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure information relating to a driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). Thus, pursuant to section 552.130, the department must withhold the driver's license numbers marked in the submitted report. The remaining information must be released.²

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²The remaining information includes a social security number. 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. Gov't Code § 552.147.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Davis", written in a cursive style.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 359640

Enc. Submitted documents

cc: Requestor
(w/o enclosures)