



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 12, 2009

Ms. Lynne Wilkerson  
General Counsel  
Bexar County Juvenile Probation Department  
301 East Mitchell Street  
San Antonio, Texas 78210-3845

OR2009-16038

Dear Ms. Wilkerson:

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# 361314.

The Bexar County Juvenile Probation Department (the "department") received a request for certain anonymous letters involving complaints against the requestor. You claim that 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.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects 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 Nos. 515 at 3 (1998), 208 at 1-2 (1978)*. The 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." *See 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. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

You contend that the identity of an employee who provided information in connection with an internal administrative investigation is protected by the common-law informer's privilege. You have not sufficiently demonstrated, however, that the employee in question reported a violation of law punishable by civil or criminal penalty to an official having a duty of inspection or of law enforcement. We therefore conclude that the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) it is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, however, we find that no portion of the submitted information is highly intimate or embarrassing and not of legitimate public interest. *See generally* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Therefore, we conclude that none of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

We note a portion of the submitted information may be subject to section 552.117 of the Government Code.<sup>1</sup> Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that the information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.024, .117. 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 be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024

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

prior to the date of the governmental body's receipt of the request for the information. Accordingly, to the extent the employee whose information is at issue timely elected confidentiality under section 552.024 for the type of information we have marked, the department must withhold that information under section 552.117(a)(1) of the Government Code. If the employee did not timely elect confidentiality for her information, no portion of the submitted information may be withheld under section 552.117(a)(1) of the Government Code.

In summary, to the extent the employee at issue timely elected confidentiality for the type of information we marked, the department must withhold that information under section 552.117(a)(1) of the Government Code. As you raise no further exception to disclosure of the remaining information, it 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](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,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/dls

Ref: ID# 361314

Enc. Submitted documents

c: Requestor  
(w/o enclosures)