



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-17699

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# 364641 (Fort Worth Public Information Request No. 5932-09).

The City of Fort Worth (the "city") received a request for any and all records from the environmental department pertaining to the requestor's company. You state the city is releasing some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information, which we have marked, is not responsive to the instant request for information because it does pertain to the requestor's company. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release that information in response to the request.¹

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. The informer's privilege, incorporated into the Act by section 552.101, 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). 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

¹As our determination is dispositive for the non-responsive information, we need not address your arguments against its disclosure.

the subject of the information does not already know the informer's identity. *See* 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." *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.

You inform us that the submitted information contains the identifying information of individuals who reported possible violations of section 11A-24 of the city's code, which regulates unreasonable and noxious odors. You state that the complaints were made to the Fort Worth city staff members charged with the authority to enforce the city's code. We understand the violations at issue carry civil and criminal penalties. We note that you have marked some information that does not identify an informer and which may not be withheld under section 552.101 based on the informer's privilege. We have marked this information for release. Based on your representations and our review of the submitted information, we conclude that the city may withhold the remaining information you have marked, as well as the additional information we have marked, under section 552.101 in conjunction with the informer's privilege.

Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). The request for information reflects that the requestor may be the owner or the authorized representative of the owner of the credit card and account numbers at issue. Thus, the requestor may have a right of access pursuant to section 552.023 of the Government Code to the credit card and account numbers you have marked under section 552.136.² *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning self). Therefore, if the requestor is the owner or is acting as the authorized representative of the owner of the credit card and account at issue, the marked information may not be withheld from this requestor pursuant to section 552.136. However, if the requestor is not the owner or the authorized representative of the owner of the credit card and account numbers, the marked information must be withheld pursuant to section 552.136 of the Government Code.

Section 552.137 of the Government Code provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a

²Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov’t Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). The e-mail addresses you have marked are not of the types specifically excluded by section 552.137(c). We note, however, that section 552.137 protects privacy. Thus, the requestor has a right of access to her own e-mail address. *See generally id.* § 552.023(b). Additionally, you have marked some information under section 552.137 that is not an e-mail address. Accordingly, with the exception of the requestor’s e-mail address and the information that is not an e-mail address, which we have marked for release, the marked e-mail addresses must be withheld under section 552.137 of the Government Code, unless the owners of the e-mail addresses consent to their release.

In summary, this ruling does not address the non-responsive information and the city need not release it. With the exception of the information we have marked for release, the city may withhold the information you have marked, as well as the additional information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. If the requestor is not the owner or the authorized representative of the owner of the credit card and account numbers you have marked, they must be withheld pursuant to section 552.136 of the Government Code. With the exception of the information we have marked for release, the marked e-mail addresses must be withheld under section 552.137 of the Government Code, unless the owners of the e-mail addresses consent to their release. 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, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 364641

Enc. Submitted documents

c: Requestor
(w/o enclosures)