



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 3, 2010

Mr. C. Patrick Phillips
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2010-01650

Dear Mr. Phillips:

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# 369167 (Fort Worth PIR Nos. 0575-10, 0597-10, 0598-10, 0599-10, 0600-10, 0601-10, 0602-10, 0603-10, 0605-10, 0606-10, 1126-10, 1161-10).

The City of Fort Worth (the "city") received several requests for the final investigative report concerning an incident at the Rainbow Lounge. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the

¹We note you have redacted peace officers' home addresses, telephone numbers, and cellular telephone numbers pursuant to section 552.117(a)(2) of the Government Code. See Open Records Decision No. 670 at 6 (2001) (home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers may be withheld under section 552.117(a)(2) without necessity of requesting attorney general decision). We also note you have redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). We further note you have redacted social security numbers from the submitted information. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from

submitted information. We have also considered comments submitted by the requestors and interested third parties. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

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. Section 552.101 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); *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 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). 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 have marked the identifying information of nearly all individuals who were present at the scene of the incident, including patrons, employees, passers-by, and paramedics. Although you generally assert the informer's privilege, you do not identify which, if any, of these individuals actually reported a violation of law. You also do not identify the specific criminal or civil statute that was allegedly violated. Accordingly, you have failed to demonstrate the informer's privilege is applicable. Thus, the city may not withhold the identifying information of these individuals under section 552.101 in conjunction with the informer's privilege.

You also assert the individuals' identifying information should be withheld from disclosure on privacy grounds because the incident took place at a nightclub catering primarily to the lesbian, gay, bisexual, and transgender community, and therefore the public may speculate that the individuals listed in the report are homosexual or condone homosexuality. Your argument is centered on the doctrine of false-light privacy. False-light privacy is concerned with the truth or falsity of information and how it affects reputation. The attorney general examined false-light privacy and its interplay with common-law privacy in Open Records Decision No. 579 (1990). In that decision, this office determined that false-light privacy contravened the purpose of the Act by rendering irrelevant the public's interest in the information. *Id.* at 6-8. This office determined the purpose of the Act was best served by the disclosure of information in which the public has a legitimate interest, even if the information is embarrassing and possibly false. *Id.* Furthermore, the doctrine of false-light

public release without the necessity of requesting a decision from this office under the Act.

privacy was rejected by the Texas Supreme Court in *Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (Tex. 1994). Thus, an argument based on false-light privacy is not grounds for excepting information from public disclosure under the Act. Therefore, the test we will apply to the information at issue is the doctrine of common-law privacy, as articulated in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See id.* at 685. Because of the nature of the incident that occurred at the Rainbow Lounge, the involvement of law enforcement personnel, and the ensuing internal investigation, the public has a legitimate interest in the identities of individuals who were present at the scene of the incident; therefore, the individuals' identifying information must be released.

You also seek to withhold certain medical information under common-law privacy. In certain instances, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are confidential under common-law privacy because they are highly intimate or embarrassing. *See, e.g.*, Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). However, not all medical information is protected under common-law privacy. *See* Open Records Decision No. 478 (1987). Individual determinations are required. *See* Open Records Decision No. 370 (1983). In this instance, the information you seek to withhold concerns an injury which an individual sustained while being detained by law enforcement personnel. The individual's injury is part of the internal investigation into the actions of law enforcement personnel during the raid. Therefore, the manner in which he was injured and the nature and severity of the injury are of legitimate public interest. Thus, the city may not withhold the injury information under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses medical records, which are confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See id.* § 151.001. Section 159.002 of the MPA provides, in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

Id. § 159.002(a), (b). This office has concluded the protection afforded by section 159.002 extends only to records created by a physician or someone under the supervision of a

physician. See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). You have marked a physician discharge document in the submitted information under section 552.101 in conjunction with the MPA. This document is a record of the diagnosis and treatment of a patient that was created by a physician; therefore, the city must withhold this document under section 552.101 in conjunction with the MPA.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail addresses you marked do not appear to be of a type specifically excluded by section 552.137(c). Therefore, unless the individuals at issue consent to release of their e-mail addresses, the city must withhold the e-mail addresses you marked under section 552.137.

In summary, the city must withhold the physician discharge document you marked under section 552.101 of the Government Code in conjunction with the MPA. The city must withhold the e-mail addresses you marked under section 552.137 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, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 369167

Enc. Submitted documents

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