



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 8, 2013

Ms. L. Carolyn Nivens  
Paralegal  
Ross, Banks, May, Cron & Cavin, P.C.  
2 Riverway, Suite 700  
Houston, Texas 77056

OR2013-00473

Dear Ms. Nivens:

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# 475486 (City Ref. No. 2351; Ross Banks File No. 3607-1).

The League City Police Department (the "department"), which you represent, received a request for information pertaining to the requestor's deceased son. You state the department will redact motor vehicle record information under section 552.130 of the Government Code and Open Records Decision No. 684 (2009).<sup>1</sup> You state the department is releasing or will release some of the requested information but claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>Section 552.130 allows a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3), such as driver's license numbers, without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *Id.* § 552.130(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, we note vehicle identification numbers are not subject to section 552.130(c) or Open Records Decision No. 684 and, therefore, may not be withheld without requesting a decision from this office.

Section 552.108(b)(2) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(b)(2). Subsection 552.108(b)(2) protects internal law enforcement and prosecution records that relate to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. A governmental body claiming an exception under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt* 551 S.W.2d 706 (Tex. 1977). You state Exhibits B, C, D, F, H, and I pertain to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree section 552.108(b)(2) is generally applicable to this information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code or the identifying information of witnesses. *See* Gov’t Code § 552.130; *see also* Open Records Decision No. 127 at 3-4 (1976). However, basic information includes a detailed description of the offense in the narrative portion of the report. *See Houston Chronicle*, 531 S.W.2d at 186-87; ORD 127 at 3-4. Thus, with the exception of the basic front-page offense and arrest information, the department may withhold Exhibits B, C, D, F, H, and I under section 552.108(b)(2).<sup>2</sup>

You indicate some of the basic information in Exhibits B, C, D, F, H, and I and the remaining documents are excepted from disclosure under section 552.101 of the Government Code, which excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the common-law informer’s privilege, which has long been recognized by Texas courts. *E.g., 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. *See* Open Records Decision No. 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

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<sup>2</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. 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 (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). We note a witness who provides information in the course of an investigation, but does not make the initial report of a violation, is not an informer for purposes of the common-law informer's privilege.

You indicate some of the remaining information is excepted from disclosure pursuant to the informer's privilege because it pertains to individuals who reported crimes to the department. Upon review, we conclude the department may withhold the identifying information of the reporting parties in the remaining information, which we have marked, under section 552.101 in conjunction with the informer's privilege. However, we find you have failed to demonstrate the applicability of the common-law informer's privilege to the remaining information, and the department may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate or 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. However, the common-law right to privacy is a personal right that lapses at death and, therefore, does not encompass information that relates to a deceased individual. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981); Attorney General Opinions JM-229 at 3 (1984), H-917 at 2 (1976); Open Records Decision No. 272 at 1 (1981). Upon review, we find the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or

(3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

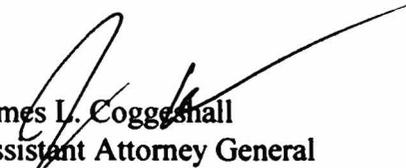
Gov't Code § 552.130(a). The department must withhold the motor vehicle record information we have marked under section 552.130.

To conclude, with the exception of basic information, the department may withhold Exhibits B, C, D, F, H, and I under section 552.108(b)(2). The department may withhold the remaining information we have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. The department must withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 475486

Enc. Submitted documents

c: Requestor  
(w/o enclosures)