



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 13, 2013

Mr. Owen Scott  
City Manager  
City of Lindale  
P.O. Box 130  
Lindale, Texas 75771

OR2013-02526

Dear Mr. Scott:

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# 479127.

The City of Lindale (the "city") received a request for e-mails sent to or from a specified person regarding any citizen complaints of zoning ordinance infractions at the requestor's address. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted 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. This exception encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v.*

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<sup>1</sup>We note you also claim the informer's privilege under Texas Rule of Evidence 508. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" for purposes of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *see also* Gov't Code § 552.022(a). However, section 552.022 is not applicable to the information you seek to withhold under the informer's privilege, and we do not address your argument under rule 508. We also note that, although you also raise section 552.221 of the Government Code, this provision does not constitute an exception to disclosure, and is procedural in nature. *See* Gov't Code § 552.301(a) (noting that exceptions to disclosure under the Act are found at subchapter C of chapter 552 of the Government Code).

*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 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) (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 4-5.

You seek to withhold the information you have marked under the common-law informer's privilege. You indicate the information you have marked reveals the identity of a complainant who reported a possible violation of the city's laws to city officials. The submitted information reveals the alleged violations reported by this complainant resulted in a citation which is punishable by a fine up to \$500. There is no indication the subject of the complaint knows the identity of the complainant. Based on your representations and our review, we conclude the city may withhold the complainant's identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find the remaining information you have marked does not identify the informer. Accordingly, it may not be withheld on this basis.

Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, 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.<sup>2</sup> Gov't Code § 552.117(a). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. We note section 552.117 encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. See Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). The remaining information contains the cellular telephone number of a city employee. To the extent the employee timely elected to keep such

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<sup>2</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).

information confidential under section 552.024 and the cellular telephone service is paid for with personal funds, the city must withhold the cellular telephone number we have marked under section 552.117 of the Government Code. If the employee did not make a timely election under section 552.024 or the cellular telephone service was not paid for with personal funds, the city may not withhold the cellular telephone number we have marked under section 552.117 of the Government Code.

In summary, the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must withhold the cellular telephone number we have marked under section 552.117 of the Government Code, to the extent the employee timely elected to keep such information confidential under section 552.024 and the cellular telephone service is paid for with personal funds. 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](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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 479127

Enc. Submitted documents

c: Requestor  
(w/o enclosures)