



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 2, 2013

Ms. Laura Russell  
Attorney  
Texas Parks & Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744

OR2013-07276

Dear Ms. Russell:

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# 486432 (TPWD No. 2013-02-R17).

The Texas Parks and Wildlife Department (the "department") received a request for all documents, communications, and complaints related to a named individual and Bat World Sanctuary from April 2012 until the date of the request. You state you have released most of the requested information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions 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. 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 have marked information in Exhibit B that the department seeks to withhold on the basis of the informer’s privilege. You explain that the marked information identifies an individual who reported an alleged violation of the conditions of a wildlife rehabilitation permit made to a department permits specialist, an administrative employee who works directly with the department law enforcement officers to investigate alleged permit violations. You inform us that a violation of the conditions of a permit is a misdemeanor criminal offense that is punishable by a fine. You state the subject of the complaint does not know the identity of the complainant. Based on your representations, we conclude that the department may withhold the information you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.<sup>1</sup>

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) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. The type of information considered highly 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. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). You seek to withhold the information you have marked in Exhibit C under common-law privacy. Upon review, we find the information you have marked in Exhibit C constitutes information that is highly intimate or embarrassing and of no legitimate concern to the public. Thus, the department must withhold the information you have marked in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.137 of the Government Code 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 owner of the e-mail address consents to its release

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

or the e-mail address falls within the scope of section 552.137(c). *See* Gov't Code § 552.137(a)-(c). The department must withhold the e-mail addresses you have marked under section 552.137 of the Government Code unless the owners affirmatively consent to their public disclosure.

In summary, the department must withhold the information you have marked: (1) in Exhibit B under section 552.101 of the Government Code in conjunction with the common-law informer's privilege; (2) in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) under section 552.137 of the Government Code unless the owners of the e-mail addresses affirmatively consent to their disclosure.

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,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/dls

Ref: ID# 486432

Enc. Submitted documents

c: Requestor  
(w/o enclosures)