



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 20, 2013

Mr. Steven Meyer  
Assistant City Attorney  
Arlington Police Department  
Mail Stop 04-0200  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2013-22241

Dear Mr. Meyer:

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# 509724 (APD Ref. No. 13029).

The Arlington Police Department (the "department") received a request for specified reports relating to an incident involving the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. 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. You raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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 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 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 4-5 (1988).

You state portions of the submitted information identify complainants who reported violations of law to the department. More specifically, the violations involved in this incident include possession with intent to deliver, felony theft, and unlawful carrying of a weapon. You also state each of these violations is subject to criminal penalties, such as incarceration. Based upon your representations and our review, we conclude the department has demonstrated the applicability of the common-law informer's privilege to some of the information at issue, which we have marked. Therefore, the department may withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, you have not demonstrated how any of the remaining information identifies the individuals who made the initial report of a criminal violation to the department for purposes of the informer's privilege. Accordingly, the department may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center.<sup>1</sup> Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See* Gov't Code § 411.089(b)(1). The submitted information contains a Federal Bureau of Investigation ("FBI") number that constitutes CHRI generated by the FBI. Therefore, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

We note a portion of the information at issue is subject to section 552.130 of the Government Code. Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1). Thus, the department must withhold the driver's license information we have marked under section 552.130 of the Government Code.

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the department 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 department must withhold the FBI number we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The department must also withhold the driver's license information we have marked under section 552.130 of the Government Code. The department must release the remaining information to this requestor.<sup>2</sup>

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rashandra C. Hayes  
Assistant Attorney General  
Open Records Division

RCH/dls

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<sup>2</sup>We note the information being released includes the requestor's driver's license information and social security number, to which the requestor has a right of access. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* 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). *See id.* § 552.130(d), (e). Additionally, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b). Accordingly, if the department receives another request for this same information from a person who does not have such a right of access, sections 552.130(c) and 552.147(b) authorize the department to redact the requestor's driver's license information and social security number without the necessity of requesting a decision under the Act.

Ref: ID# 509724

Enc. Submitted documents

c: Requestor  
(w/o enclosures)