



February 17, 2015

Mr. Brandon S. Shelby
City Attorney
City of Sherman
P.O. Box 1106
Sherman, Texas 75091

OR2015-03088

Dear Mr. Shelby:

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# 553713 (Internal Reference No. OR-1685-SPD#170).

The Sherman Police Department (the "department") received a request for a specified incident report. You state the department will release some of the requested information. You claim portions of the submitted information are 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 "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). However, we note the public has a legitimate interest in knowing the details of a crime. *See Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a "legitimate public interest

in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). Upon review, we find you have failed to demonstrate any of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Accordingly, none of the submitted information may be withheld under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.101 of the Government Code also 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 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 report does not already know their identities. Open Records Decision Nos. 515 at 2-3 (1988), 434 at 1-2 (1986), 208 at 1-2 (1978). For the informer’s privilege to apply, the report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at (1990), 515 at 3-4. The privilege affords protection to individuals who report violations of statutes to criminal 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)). However, witnesses who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of the informer’s privilege. Upon review, we find the department has not demonstrated the information you seek to withhold identifies an informer for purposes of the common-law informer’s privilege. Therefore, the department may not withhold the information at issue under section 552.101 on the basis of the common-law informer’s privilege.

We note some of the remaining information is subject to sections 552.1175 and 552.130 of the Government Code.¹ Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov’t Code § 552.1175(b). Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). We note the submitted video recording contains the personal information of a peace officer employed by the department. Therefore, if the peace officer at issue elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information we have indicated under section 552.1175. If the peace officer at issue does not elect to restrict access to his information, the department may not withhold his information.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

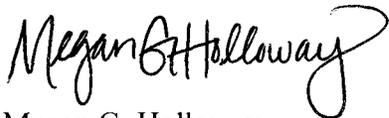
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a). Upon review, we find the department must withhold the information we have marked, along with the information we have indicated in the submitted video recording, under section 552.130 of the Government Code.

In summary, if the peace officer at issue elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information we have indicated in the submitted video recording under section 552.1175 of the Government Code. The department must withhold the information we have marked, along with the information we have indicated in the submitted video recording, 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.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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/cbz

Ref: ID# 553713

Enc. Submitted documents

c: Requestor
(w/o enclosures)