



February 19, 2015

Ms. Lisa D. Mares
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2015-03335

Dear Ms. Mares:

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# 554027 (ORR# 10-12679).

The McKinney Police Department (the "department"), which you represent, received a request for three specified incident reports and all 2014 incident reports pertaining to the requestor. You claim some of 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.

Initially, we note you have submitted only one incident report for our review. To the extent any information responsive to the remainder of the request existed when the department received the request, we assume you have released it. If you have not released any such information to the requestor, you must do so at this time. *See* Gov't Code §§ 552.006, .301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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. 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 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 purposes of the informer's privilege. 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).

You assert the information you have highlighted in the submitted information identifies a person who provided information regarding an alleged violation of law. Upon review, we find the information you seek to withhold pertains to a witness in the investigation and, thus, does not identify an informant for purposes of the common-law informer's privilege. Consequently, the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

We note some of the submitted information is subject to section 552.130 of the Government Code.¹ Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). It appears the department has redacted some motor vehicle record information pursuant to section 552.130(c) of the Government Code.² Upon review, we find the department must withhold the additional information we have marked under section 552.130 of the Government Code. The department must release the remaining information.

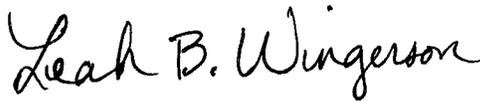
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130 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).

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,

A handwritten signature in black ink that reads "Leah B. Wingerson". The signature is written in a cursive, flowing style.

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 554027

Enc. Submitted documents

c: Requestor
(w/o enclosures)