



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 3, 2015

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

OR2015-04129

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# 555055 (OR-1967).

The Sherman Police Department (the "department") received a request for three specified reports. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.136, 552.147, and 552.148 of the Government Code.<sup>1</sup> 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. 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 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

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<sup>1</sup>Although you do not raise sections 552.136 and 552.147 in your briefing to this office, we understand you to raise these exceptions based on your markings in the submitted documents.

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 (1988). 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 information you seek to withhold consists of witnesses in the investigation. Therefore, the department may not withhold the information you have marked under section 552.101 on the basis of the common-law informer’s privilege.

Section 552.101 also 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 highly intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find the remaining information does not consist of highly intimate or embarrassing information that is not of legitimate public concern. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. See Gov’t Code § 552.130. Upon review, we find portions of the submitted information consist of motor vehicle record information. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. See *id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 states “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Accordingly, we find the department must withhold the credit card number you have marked under section 552.136 of the Government Code.

Section 552.147 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). The requestor has a right, however, to his own social security number. *See generally id.* § 552.023(b). Therefore, the department may not withhold the marked social security number under section 552.147, but must, instead, release it to the requestor.

Lastly, you raise section 552.148 of the Government Code for portions of the submitted information. Section 552.148 provides the following:

- (a) In this section, "minor" means a person younger than 18 years of age.
- (b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from [required disclosure]:
  - (1) the name, age, home address, home telephone number, or social security number of the minor;
  - (2) a photograph of the minor; and
  - (3) the name of the minor's parent or legal guardian.

*Id.* § 552.148. Section 552.148 specifically applies to information maintained by a municipality "for purposes related to the participation by a minor in a recreational program or activity[.]" *Id.* § 552.148(b). Because the submitted information is not related to participation in a recreational program or activity, section 552.148 of the Government Code does not apply, and the department may not withhold any information on this basis.

In summary, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code and the credit card number you have marked under section 552.136 of the Government Code. The department must release the remaining information.<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.

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<sup>2</sup>We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See Gov't Code* § 552.023(a). Thus, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office.

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,

A handwritten signature in cursive script that reads "Paigelay".

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/som

Ref: ID# 555055

Enc. Submitted documents

c: Requestor  
(w/o enclosures)