



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 3, 2015

Mr. John P. Beauchamp
General Counsel
Texas Commission on Law Enforcement
6330 East Highway 290, Suite 200
Austin, Texas 78723-1035

OR2015-04174

Dear Mr. Beauchamp:

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# 555153.

The Texas Commission on Law Enforcement (the "commission") received a request for the complete investigation file pertaining to a specified reprimand of a named individual, as well as any other reprimands of that individual, and specified commission meeting minutes. You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code and privileged under Texas Rule of Evidence 508.¹ We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information contains peace officers' commission identification numbers. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. ORD 581 at 5. We understand an officer's commission identification number is a unique computer-generated number assigned to peace officers for identification in the commission electronic database, and may

¹We understand you to raise section 552.101 based on the substance of your arguments.

be used as an access device number on the commission's website. Accordingly, we find the officers' commission identification numbers do not constitute public information under section 552.002 of the Government Code. Thus, the submitted commission identification numbers are not subject to the Act, and the commission is not required to release them to the requestor.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless it is excepted by section 552.108 of the Government Code or "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation. This information is subject to section 552.022(a)(1) and must be released unless it is either excepted from disclosure under section 552.108 of the Government Code or is confidential under the Act or other law. You do not claim section 552.108. However, you contend that portions of the submitted information are excepted from disclosure under Texas Rule of Evidence 508. The Texas Supreme Court has held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). We also understand you to raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege, which is also other law for purposes of section 552.022. *See Tex. Comm'n on Envtl. Quality v. Abbott*, No. GV300417 (126th Dist. Ct., Travis County, Tex.). Thus, we will address your arguments against disclosure of these portions of the submitted information.

Texas Rule of Evidence 508 provides, in relevant part:

(a) Rule of Privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished, except the privilege shall not be allowed in criminal cases if the state objects.

TEX. R. EVID. 508(a), (b). Thus, an informer's identity is protected under Rule 508 if a governmental body demonstrates that an individual has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation, and the information does not fall within the purview of the exceptions to the privilege enumerated in Rule 508(c). You indicate the commission's enforcement division conducted a criminal investigation into alleged criminal violations of chapter 1701 of the Occupations Code. *See*

Occ. Code §§ 1701.551.553 (detailing criminal penalties for violations of chapter 1701). You seek to withhold the identifying information of a complainant and witnesses for this investigation who supplied “information to [the commission] regarding alleged violations of Texas law by a [commission] licensee.” You do not indicate, nor does it otherwise appear, that any of the exceptions to the informer’s privilege listed in Rule 508(c) are applicable in this instance. Based on your arguments and our review of the submitted information, we find the information we have marked is excepted from disclosure under Rule 508. Thus, the commission may withhold the information we have marked under Texas Rule of Evidence 508. However, upon review, we find you have failed to demonstrate how any portion of the remaining information is excepted from disclosure under Rule 508. Therefore, the commission may not withhold any portion of the remaining information under Texas Rule of Evidence 508.

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. Section 552.101 encompasses 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 common-law 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 information does not already know the informer’s identity. *See Open Records Decision Nos. 515 at 3 (1988), 208 at 1–2 (1978)*. The 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.” *See 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*. The privilege excepts the informer’s statement from disclosure only to the extent necessary to protect the informer’s identity. *See Open Records Decision No. 549 at 5 (1990)*. Upon review, we find you have failed to demonstrate how any portion of the remaining information reveals the identity of an informer for purposes of the common-law informer’s privilege. Therefore, the commission may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

In summary, the submitted commission identification numbers are not subject to the Act, and the commission is not required to release them to the requestor. The commission may withhold the information we have marked under Texas Rule of Evidence 508. The remaining information must be released.

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,



Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 555153

Enc: Submitted documents

c: Requestor
(w/o enclosures)
