



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 19, 2015

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

OR2015-05289

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# 557003.

The Texas Commission on Law Enforcement (the "commission") received a request for (1) the complete investigative file on a specific case number; (2) every e-mail sent to or from a named individual regarding her investigation of a specific case number; (3) a copy of a specific list of officers; (4) page 1 of a specific case number; and (5) a copy of a specific audit report. The commission states it will release some information. The commission claims some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.137 of the Government Code and privileged under Texas Rule of Evidence 508.¹ We have considered the commission's 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

¹Although the commission raised sections 552.101 through 552.153 of the Government Code as exceptions to disclosure in its brief, the commission only submitted arguments in its brief in support of sections 552.101, 552.117, 552.1175, and 552.137. Therefore, we assume the commission has withdrawn its claim under the remaining exceptions. See Gov't Code §§ 552.301, .302.

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 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 a portion of the remaining 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 information at issue 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. The commission does not claim section 552.108. However, the commission contends that portions of the information at issue are excepted 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). The commission also raises 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. GV-300417 (126th Dist. Ct., Travis County, Tex.). Further, because sections 552.117 and 552.1175 of the Government Code can make information confidential under the Act, we will address the applicability of those sections to the information subject to subsection 552.022(a)(1). We will also address the commission's arguments for the information not subject to section 552.022.

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). The commission seeks to withhold the identifying information of a complainant and witnesses who supplied information to the commission regarding alleged violations of Texas law. The commission does 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 the commission's arguments and our review of the information at issue, we find the information we have marked is excepted under Rule 508. Thus, the commission may withhold the information we have marked under Texas Rule of Evidence 508.² However, we find the commission has failed to demonstrate how any portion of the remaining information is excepted for purposes of 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 only to the extent necessary to protect the informer's identity. *See Open Records Decision No. 549 at 5 (1990)*. Upon review, we find the commission has failed to demonstrate how any portion of the remaining information reveals the identity of an informer for purposes of the 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.

The commission raises section 552.137 of the Government Code for portions of the information not subject to section 552.022. Section 552.137 excepts from disclosure "an

²As our ruling is dispositive, we need not address your claims under sections 552.117 and 552.1175 for this information.

e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the commission must withhold the personal e-mail address it has marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

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 commission must withhold the personal e-mail address it has marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 557003

Enc. Submitted documents

c: Requestor
(w/o enclosures)