



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 19, 2015

Ms. Jessica D. Richard
Assistant City Attorney
City of New Braunfels
424 South Castell Avenue
New Braunfels, Texas 78130

OR2015-24357

Dear Ms. Richard:

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# 589413 (ORR# 2015-406).

The City of New Braunfels (the "city") received a request for code enforcement records pertaining to a specified address. The city claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the request for information because it does not pertain to the specified address. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release this information, which we have marked, in response to this request. Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the informer's privilege, which has long been recognized by Texas courts. *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 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*

¹We understand the city to raise section 552.130 based on its markings.

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)). 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).

The city states some of the responsive information identifies a complainant who reported violations of city ordinances to the city's Code Enforcement Division (the "division"). The city explains the division is responsible for enforcing the relevant portions of city ordinances. The city also states violations of the relevant city ordinances carry fines and penalties. Upon review, we conclude the city has demonstrated the applicability of the common-law informer's privilege to the identifying information of the complainant, which we have marked. Therefore, the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, the remaining information the city seeks to withhold under section 552.101, including the marked IP addresses, does not identify the complainant for purposes of the informer's privilege. Accordingly, the city may not withhold any of the remaining information under section 552.101 on that ground.

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. The city has marked motor vehicle record information pertaining to the requestor's spouse, as well as license plate numbers in the submitted photographs. Because section 552.130 protects personal privacy, the requestor has a right of access to her spouse's information pursuant to section 552.023 of the Government Code. See *id.* § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). However, we are unable to determine whether the requestor or her spouse owns the vehicles pertaining to the license plate numbers you have marked. Thus, we must rule conditionally. The city must withhold the license plate numbers you have marked under section 552.130 of the Government Code if the requestor or her spouse does not own the vehicles at issue. See Gov't Code § 552.130. If the requestor or her spouse owns the vehicle at issue, then the city may not withhold this information under section 552.130 but, instead, must release it. See *id.* § 552.023(a).

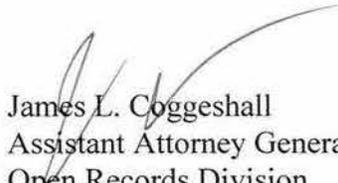
We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

To conclude, the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must withhold the license plate numbers you have marked under section 552.130 of the Government Code if the requestor or her spouse does not own the vehicles at issue. The city must release the remaining responsive information, but may only release any copyrighted information in accordance with copyright law.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/sb

Ref: ID# 589413

Enc. Submitted documents

c: Requestor
(w/o enclosures)