



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2016

Ms. Paige Mebane
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-17133

Dear Ms. Mebane:

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# 620529 (Fort Worth PIR No. W051656).

The City of Fort Worth (the "city") received a request for all animal control calls investigated on a specified date. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the request for information because it was created after the day the request was received. This ruling does

¹Although you do not raise sections 552.130 and 552.137 of the Government Code in your brief, we understand you to raise these exceptions based on your markings.

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 in response to this request.

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)). 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 claiming the informer’s privilege. 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). We note the informer’s privilege does not apply where the informant’s identity is known to the individual who is the subject of the complaint. *See ORD 208* at 1-2.

You claim the informer’s privilege for the identities of complainants who reported alleged violations of sections of the Fort Worth City Code to the city, which provides for a fine of up to \$2,000 per day per violation. Based upon your representations and our review, we conclude the city has demonstrated the applicability of the common-law informer’s privilege to some of the information at issue. However, we find some of the information you have marked does not identify an individual who reported a violation of the law to the city for purposes of the informer’s privilege, or the individuals who are the subjects of some of the complaints at issue know the identities of the complainants. This information, which we have marked and indicated for release, may not be withheld under section 552.101 in conjunction with the common-law informer’s privilege. Therefore, with the exception of the information we have marked for release, the city may withhold the identifying information of informers you have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

Section 552.101 of the Government Code 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 intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.² *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. This office has also held common-law privacy protects the identifying information of a juvenile victim of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201.

Upon review, we find some of the remaining responsive information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, some of the information at issue pertains to individuals who have been de-identified and whose privacy interests are thus protected. Accordingly, the city must withhold the information we have marked, as well as identifiable public citizens' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. We find you have not demonstrated any of the remaining responsive information is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any of the remaining responsive information under section 552.101 in conjunction with common-law privacy.

Some of the remaining responsive information may be subject to section 552.1175 of the Government Code.³ Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Some of the remaining responsive information, which we have marked, relates to a peace officer for a

²Section 552.102(a) exempts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

³The 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).

police department in another city. Accordingly, if the officer whose information is at issue elects to restrict access to his information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code. Conversely, if the officer whose information is at issue does not elect to restrict access to his information in accordance with section 552.1175(b), then the information we have marked may not be withheld under section 552.1175.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. Gov't Code § 552.130(a). Accordingly, the city must withhold the information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov't Code § 552.137(a)–(c). The city must withhold the e-mail addresses you have marked in the remaining information under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release.

In summary, with the exception of the information we have marked for release, the city may withhold the identifying information of informers under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must withhold the information we have marked, as well as identifiable public citizens' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. If the officer whose information is at issue elects to restrict access to his information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code. The city must withhold the information we have marked under section 552.130 of the Government Code. The city must withhold the e-mail addresses you have marked in the remaining information under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release. The city must release the remaining responsive information to the requestor.

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, appearing to read 'JBW', with a large, sweeping flourish extending to the right.

Joseph Behrke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 620529

Enc. Submitted documents

c: Requestor
(w/o enclosures)