



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2009

Ms. Nicole B. Webster
Assistant City Attorney
City of Waco - Legal Services
P.O. Box 2570
Waco, Texas 76702-2570

OR2009-02482

Dear Ms. Webster:

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# 336188 (Waco reference # LGL-08-1189).

The Waco Police Department (the "department") received a request for all arrest reports pertaining to the requestor. You state that the department will release some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. 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," and encompasses information made confidential by other statutes. Gov't Code § 552.101. You have marked telephone numbers and addresses in the submitted CAD records that you seek to withhold under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772, and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). We understand the City of Waco to be part of an emergency

communication district that was established under section 772.318.¹ Thus, we determine that the originating telephone numbers and addresses you have marked in the submitted CAD records are excepted from public disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.

You also 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 the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See* Open Records Decision Nos. 515 at 3 (1998), 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 Wigmore, Evidence, § 2374, at 767 (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 (1988). 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).

You state that the highlighted name in one of the submitted CAD records identifies an individual who reported an alleged violation of the law to the department. You explain that the report was of a possible violation of the Texas Penal Code, which carries criminal penalties. Thus, based on your representations and our review, we conclude that the department has demonstrated the applicability of the common-law informer's privilege in this instance. Thus, the department may withhold the name you have marked in one of the submitted CAD records under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Next, you claim that report numbers 08-9036 and 08-7888, as well as the related 9-1-1 call recording are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report numbers 08-9036 and 08-7888 and the related 9-1-1 call recording relate to pending criminal

¹Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

investigations or prosecutions. Based on this representation and our review of the information at issue, we conclude that section 552.108(a)(1) is applicable to report numbers 08-9036 and 08-7888 and the related 9-1-1 call recording. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, and you acknowledge, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*.² *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Therefore, with the exception of basic information, which must be released, the department may withhold report numbers 08-9036, 08-7888, and the related 9-1-1 call recording under section 552.108(a)(1) of the Government Code.³

Next, you have marked information in the remaining information that you claim is excepted under section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas motor vehicle information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

Next, we note that the remaining information contains information that is subject to chapter 411 of the Government Code. Section 552.101 of the Government Code also encompasses information protected by section 411.083 of the Government Code. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency

²We note basic information includes an arrestee's social security number. Section 552.147(b) 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. However, the requestor has a right of access to his own social security number and it must be released to him. *See generally* Gov't Code § 552.023(b).

³As our ruling is dispositive, we do not address your remaining claim against the disclosure of a portion of report number 08-9036. Open Records Decision No. 597 (1991).

to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). A portion of the remaining information constitutes CHRI. We have marked the information the department must withhold pursuant to section 552.101 in conjunction with chapter 411 of the Government Code.

In summary, the department must withhold the originating telephone numbers and addresses you have marked in the submitted CAD records under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department may withhold the name you have highlighted in one of the CAD records under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. With the exception of basic information, which must be released, the department may withhold report numbers 08-9036, 08-7888, and the related 9-1-1 call recording under section 552.108(a)(1) of the Government Code. The department must withhold the Texas motor vehicle information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The remaining information must be released to the requestor.⁴

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.oag.state.tx.us/open/index_orl.php, 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

⁴We note the remaining information contains social security numbers not belonging to the requestor. Section 552.147(b) 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. Gov't Code § 552.147. We also note that the requestor has a special right of access to some of the information being released in this instance. *See id.* § 552.023(a). Because such information may be confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Laura E. Ream".

Laura E. Ream
Assistant Attorney General
Open Records Division

LER/eb

Ref: ID# 336188

Enc. Submitted documents

cc: Requestor
(w/o enclosures)