



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2009

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

OR2009-07011

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# 347723 (Waco Reference No. LGL-09-369).

The Waco Police Department (the "department") received a request for information pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 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 a telephone number in the submitted CAD summary 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 number you have marked in the submitted CAD summary is 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 the submitted CAD summary identifies an individual who reported an alleged violation of the law to the department. You state that the report was of a possible violation of a criminal act, which carries criminal penalties. 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 information you have marked, as well as the information we have marked, pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Next, you claim that report number 09-4484 is 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 number 09-4484 relates to an open and pending criminal investigation. Based on this representation and our review of the information at issue, we conclude that

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

section 552.108(a)(1) is applicable to report number 09-4484. *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*. *See Open Records Decision No. 127 (1976)* (summarizing types of information made public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold report number 09-4484 under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold the originating telephone number you have marked in the submitted CAD summary 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 information you have highlighted, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The department may, with the exception of basic information, withhold report number 09-4484 under section 552.108(a)(1) of the Government Code. 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.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 information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Travis Tidmore
Assistant Attorney General
Open Records Division

TT/sdk

Ref: ID# 344723

Enc: Submitted documents

c: Requestor
(w/o enclosures)