



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 1, 2009

Mr. Robert Massey  
Assistant City Attorney II  
City of Wichita Falls Legal Department  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2009-09065

Dear Mr. Massey:

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# 347726.

The Wichita Falls Police Department (the "department") received a request for information regarding a specified 9-1-1 call. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You claim that the requested information is protected by the common-law informer's privilege. 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. The common-law informer's privilege, incorporated into the Act by section 552.101, 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). This 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 that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). It 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 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. The privilege excepts an informer’s statement only to the extent necessary to protect the informer’s identity. *See* Open Records Decision No. 549 at 5 (1990).

You assert that the complainant reported a violation of Penal Code section 22.01(a)(2), a class C misdemeanor, to the department’s 9-1-1 call center. Based on your representations and our review of the submitted 9-1-1 reports and audio recordings, we conclude that the department has demonstrated the applicability of the common-law informer’s privilege to the complainant’s identifying information. Therefore, the department may withhold the identifying information of the complainant in the 9-1-1 call sheets, which we have marked, as well as the first submitted audio recording in its entirety pursuant to section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. We note the remaining information is not identifying of the complainant. Therefore, you may not withhold this information under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find the remaining submitted information is either not intimate or embarrassing, or is of legitimate public interest. Therefore, no portion of the remaining submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the department may withhold the information we have marked in the 9-1-1 call sheets and one of the submitted audio recordings pursuant to section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. The remaining submitted 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](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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/jb

Ref: ID# 347726

Enc. Submitted documents

c: Requestor  
(w/o enclosures)