



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2010

Ms. Yvette Aguilar
Assistant City Attorney
Police Legal Advisor
321 John Sartain
Corpus Christi, Texas 78401

OR2010-01388

Dear Ms. Aguilar:

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# 369072.

The Corpus Christi Police Department (the "department") received a request for copies of all calls for service, complaints, warrants served, searches, and arrests at a specified address from 1999 to the date of the request. You state you have released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information you have marked relates to concluded criminal investigations that did not result in conviction or deferred adjudication. Based on this representation, we conclude that

¹ You inform us the department no longer asserts the other exceptions to disclosure that you raised in your November 20, 2009 correspondence with our office.

section 552.108(a)(2) is applicable to the information at issue, and the department may withhold the information you have marked under section 552.108(a)(2) of the Government Code.²

You raise section 552.101 of the Government Code for portions of the remaining information. Section 552.101 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. Section 552.101 encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. 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 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. Furthermore, 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 chapter 411, subchapter F. Upon review, we agree that a portion of the submitted information, which you have marked, constitutes CHRI generated by the FBI which must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which 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). You inform us that the City of Corpus Christi is part of an emergency communication district that was established under section 772.318.³ You have marked telephone numbers and addresses in the submitted Event Information documents and CAD records that you seek to withhold under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. You claim these telephone numbers and

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

³ Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

addresses were furnished by the 9-1-1 service supplier. However, the information marked "Address" in the Event Information document dated June 4, 2008 consists of the name of a city and does not specify an address. Because this information is not the originating address of the 9-1-1 caller, it is not confidential under section 772.318. Based on your representation and our review, the telephone numbers and remaining addresses you have marked are confidential under section 772.318 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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 agree a portion of the information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information you have marked is not highly intimate or embarrassing information of no legitimate public interest, and it may not be withheld on that basis.

Section 552.101 also encompasses the common-law informer's privilege, which has long been recognized by Texas courts. *See, e.g., 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 that the subject of the information does not already know the informer's identity. *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). 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).

You state that the information in event no. 0911004936, which you have marked, identifies a person who reported possible violations of the Texas Health and Safety Code Controlled Substances Act to the department. You also inform us that a violation of the Controlled Substances Act can result in criminal penalties. Based on your representations and our

review, we find that the person's identity is protected by the common-law informer's privilege. *See* Open Records Decision No. 156 (1977) (name of person who makes complaint about another individual to city's animal control division is excepted from disclosure by informer's privilege so long as information furnished discloses potential violation of state law). We therefore conclude that the department may withhold the identifying information of the complainant in event no. 0911004936 under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Finally, section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). The department must withhold the driver's license numbers you have marked pursuant to section 552.130.⁴

In summary, the department may withhold the information you have marked under section 552.108(a)(2) of the Government Code. The department must withhold the CHRI you have marked under section 552.101 in conjunction with chapter 411 of the Government Code. The department must withhold the originating telephone numbers and addresses of 9-1-1 callers that were furnished by a 9-1-1 service supplier under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. The department must withhold the driver's license numbers you have marked under section 552.130 of the Government Code. The remaining information must be released.⁵

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

⁴ We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁵ We note the remaining information includes social security numbers. 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.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/rl

Ref: ID# 369072

Enc. Submitted documents

c: Requestor
(w/o enclosures)
