



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 7, 2010

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2010-06589

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# 378550.

The Corpus Christi Police Department (the "department") received two requests for several categories of information regarding a specified location over specified periods of time. You state the department has released some of the requested information. You indicate you are withholding social security numbers pursuant to section 552.147 of the Government Code and some of the responsive information under sections 552.130 and 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ 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." Gov't

¹Section 552.147(b) of the Government Code authorizes a government 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. Additionally, this office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies, which authorizes the withholding of ten categories of information, including Texas driver's license and Texas license plate numbers under section 552.130 of the Government Code and a credit card number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

Code § 552.101. This section encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. *See id.* § 411.083(a). 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 at 7 (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 the Department of Public Safety ("DPS") maintains, except 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. Similarly, 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). Accordingly, the department must withhold the CHRI you marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See Open Records Decision No. 649* (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier confidential. *See id.* at 2. You assert that the City of Corpus Christi is part of an emergency communication district established under section 772.318 of the Health and Safety Code. You state that the telephone numbers and addresses you have marked in the submitted information were furnished by a 9-1-1 service supplier. Based on your representations, we conclude that the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 also encompasses section 550.065 of the Transportation Code. The submitted information includes CRB-3 and CR-3 accident report forms that were completed pursuant to chapter 550 of the Transportation Code. *See Transp. Code* § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states, except as provided by subsection (c), accident reports are privileged and confidential. *Id.* § 550.065(b). Section 550.065(c)(4) of the Transportation Code provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the

accident. *Id.* § 550.065(c)(4). Under this provision, the department or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* Here, the requestors have not provided the department with two of the required pieces of information. Thus, you must withhold the accident reports, which you have marked, in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy 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 type of information considered intimate or 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. Additionally, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (information pertaining to illness from severe emotional and job-related stress protected by common-law privacy), 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, this information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have not demonstrated how the remaining information you have marked is highly intimate or embarrassing and not of legitimate public interest. Thus, no portion of the remaining information is confidential under common-law privacy, and it may not be withheld on that basis.

Section 552.101 also encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It 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). 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 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 the informer's statement

only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You marked the name of a 9-1-1 caller under the informer's privilege. You represent, and the information reflects, this caller reported an aggravated assault, which is a criminal offense under section 22.01 of the Penal Code, to the department. You do not indicate, nor does it appear, the requestors know the identity of this informer. Based on your representations and our review, we conclude the department may withhold the name of the 9-1-1 caller you marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

You raise section 552.108 of the Government Code as an exception to disclosure for the information you marked. 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 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 some of the reports you have marked under section 552.108 pertain to pending criminal investigations or prosecutions. You also state the remaining reports you have marked under section 552.108 relate to inactive criminal cases for which the statute of limitations has not run. Based upon these representations, we conclude that release of the information you marked would interfere with the detection, investigation, or prosecution of crime. *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). Accordingly, we conclude that the department may withhold the information you marked under section 552.108(a)(1) of the Government Code.

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which 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). We note that some of the information you marked does not consist of Texas motor vehicle record information. Thus, this information, which we have marked for release, may not be withheld under section 552.130. Accordingly, with the exception of the information marked for release, the department must withhold the Texas motor vehicle record information you marked, in addition to the information we have marked, under section 552.130.

In summary, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with: (1) chapter 411 of the Government Code and federal law, (2) section 772.318 of the Health and Safety Code, and

(3) section 550.065(b) of the Transportation Code. The department must also withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the information you marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege and section 552.108(a)(1) of the Government Code. With the exception of the information marked for release, the department must withhold the Texas motor vehicle record information you marked, in addition to the information we have marked, under section 552.130 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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 378550

Enc. Submitted documents

c: Requestor
(w/o enclosures)