



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2010

Mr. David Daugherty
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2010-08280

Dear Mr. Daugherty:

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# 381784 (C.A. File No. 10GEN0569).

The Harris County Constable Precinct 3 (the "constable") received a request for dispatch call history for three addresses during a specified time period. You state the constable is releasing some of the requested information. You claim portions of the submitted information are 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 772.318 of the Health and Safety Code. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000 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 state that Harris County is within an emergency communication district that is subject to section 772.318. Thus, we find that to the extent the telephone numbers and addresses we have marked are the originating telephone numbers and addresses of the 9-1-1 callers supplied by a service supplier, this information must be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, if any of the telephone numbers and addresses we have marked are not the originating telephone numbers and addresses of 9-1-1 callers or not supplied by a service supplier, they must be released to the requestor.

You also raise section 552.101 in conjunction with the common-law informer's privilege. Texas courts have long recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The 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 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." *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 claim the identities of the 9-1-1 callers should be withheld under section 552.101 in conjunction with the informer's privilege. We have marked the identifying information of an individual who reported an alleged violation of criminal law, and this information may be withheld under section 552.101 on that basis. You do not indicate, however, whether the remaining alleged violations could result in the imposition of a civil or criminal penalty. We therefore conclude that you have not demonstrated that the remaining individuals' identities are protected by the common-law informer's privilege, and the constable may not withhold this information on that basis under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The types 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. The constable must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Finally, section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(2). The constable must withhold the Texas license plate number you have marked under section 552.130.¹

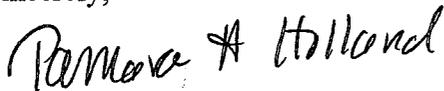
¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, in conjunction with section 552.101 of the Government Code (1) to the extent the telephone numbers and addresses we have marked are the originating telephone numbers and addresses of the 9-1-1 callers supplied by a service supplier, this information must be withheld under section 772.318 of the Health and Safety Code; (2) we have marked the information that may be withheld under the common-law informer's privilege; and (3) we have marked the information that must be withheld under common-law privacy. The constable must withhold the information you 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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/jb

Ref: ID# 381784

Enc. Submitted documents

c: Requestor
(w/o enclosures)