ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2010

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2010-13947

Dear Ms. Graham:

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# 393657.

The Mesquite Police Department (the "department") received a request for eight specified call sheets. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 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 Code § 552.101. The common-law informer's privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts. *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 assert portions of the submitted information contain the identifying information of individuals who reported "various on-site property conditions" to the department, which are "suspected to be [violations] of [the City of Mesquite's Code of Ordinances]." You state these violations are subject to criminal penalties. However, upon review, none of the calls pertain to allegations of "on-site property conditions." Further, you have failed to identify any statutory violations to which these calls relate. Thus, you have failed to demonstrate how the informer's privilege is applicable to the individuals' identities. *See* Gov't Code § 552.301(e)(1)(A); Open Records Decision Nos. 542 (1990) (concluding Act places on governmental body burden of establishing why and how exception applies to requested information), 532 (1989), 515, 252 (1980). Consequently, the department may not withhold any of the information at issue pursuant to section 552.101 in conjunction with the informer's privilege.

You also seek to withhold some of the submitted information under section 552.101 in conjunction with the doctrine of common-law privacy. 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 to be intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). You claim portions of the submitted information, which you have marked, are subject to common-law privacy. Upon review, we find some of the submitted information is highly intimate or embarrassing and not of legitimate interest to the public. Thus, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, none of the remaining information you have marked is

highly intimate or embarrassing and not of legitimate public interest, and the department may not withhold it under section 552.101 on the basis of common-law privacy.

You have marked telephone numbers and addresses in the remaining information that you seek to withhold under section 552.101 in conjunction with section 771.061 of the Health and Safety Code. Section 771.061 makes confidential "[i]nformation that a service provider of telecommunications service is required to furnish to a governmental entity in providing computerized 9-1-1 service" and "[i]nformation that is contained in an address database maintained by a governmental entity or a third party used in providing computerized 9-1-1 service." Health & Safety Code § 771.061(a). We find that to the extent the information at issue was required to be furnished to the department by a telecommunications service provider or is contained in an address database used in providing computerized 9-1-1 service, this information is confidential under section 771.061 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. *See also* Open Records Decision No. 661 at 1-2 (1999). However, to the extent the information at issue was not required to be furnished to the department by a telecommunications service provider and is not contained in an address database used in providing computerized 9-1-1 service, it is not confidential under 771.061, and may not be withheld under section 552.101. To the extent the information at issue is not confidential under section 771.061 of the Health and Safety Code, we address your remaining argument against disclosure of this information.

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 service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. We understand you to assert the City of Mesquite is part of an emergency communication district established under section 772.118. Thus, to the extent the telephone numbers and addresses you marked are the originating telephone numbers and addresses provided by a 9-1-1 service supplier, they must be withheld under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code. However, to the extent the information at issue was not provided by a 9-1-1 service supplier, it may not be withheld under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code.

You claim portions of the remaining information are excepted from public disclosure 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 section 552.130 protects personal privacy. In this instance, the requestor may be the spouse of one of the individuals to whom some of the information at issue pertains. As such,

the requestor may have a special right of access to the information relating to her spouse as his authorized representative. *See id.* § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or individual's authorized representative requests information concerning that individual). If the requestor is seeking the information at issue on behalf of her spouse, pursuant to section 552.023, the requestor has a special right of access to her spouse's Texas motor vehicle record information, which we have marked, under section 552.130. If the requestor is not seeking the information at issue on behalf of her spouse, then the department must withhold his marked Texas motor vehicle record information under section 552.130 of the Government Code. We note the driver's license issuing state you have marked in the remaining information does not constitute motor vehicle record information for purposes of section 552.130. Thus, the department must only withhold the remaining Texas motor vehicle record information we have marked under section 552.130 of the Government Code.[1]

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the telephone numbers and addresses you have marked were required to be furnished to the department by a telecommunications service provider or are contained in an address database used in providing computerized 9-1-1 service, this information is confidential under section 771.061 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. To the extent the telephone numbers and addresses you have marked are the originating telephone numbers and addresses supplied by a 9-1-1 service supplier, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code. If the requestor is not seeking the Texas motor vehicle record information on behalf of her spouse, then the department must withhold his marked information under section 552.130 of the Government Code. The department must only withhold the remaining Texas motor vehicle record 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,

---

[1]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 a Texas driver's license number and license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 393657

Enc. Submitted documents

c: Requestor
(w/o enclosures)