



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 14, 2010

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

OR2010-15644

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# 396941 (C.A. File No. 10GEN1545).

The Harris County Sheriff's Office (the "sheriff") received two requests from different requestors for the 9-1-1 calls pertaining to a specified incident. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.132 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the sheriff's procedural obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). In this instance, you state, and the submitted copy of the request for information shows, the sheriff received the first request for information on July 27, 2010. However, you did not submit the information at issue until August 18, 2010. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the sheriff failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the information is public and must be released, unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision Nos. 630 (1994), 319 (1982). You raise section 552.101 of the Government Code in conjunction with the informer's privilege. Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because the purpose of the informer's privilege is to protect the flow of information to a governmental body, rather than to protect the interests of a third person, the informer's privilege, unlike other claims under section 552.101, can be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the informer's privilege may not serve as a compelling reason for overcoming the presumption of openness under section 552.302, and the sheriff may not withhold any of the submitted information on that basis. You also claim the information at issue is excepted from disclosure under section 552.108 of the Government Code. However, this section is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the submitted information may not be withheld under section 552.108 of the Government Code. Because sections 552.101, 552.130, and 552.132 can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to 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 are not supplied by a service supplier, they must be released to the requestor.

You also raise section 552.101 in conjunction with 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 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. Upon review, we find you have failed to demonstrate how the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the sheriff may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.130 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). Upon review, we find that none of the remaining information consists of Texas motor vehicle information subject to section 552.130. Thus, the sheriff may not withhold any of the remaining information under section 552.130.

Next, you assert some of the remaining information is excepted from disclosure under section 552.132 of the Government Code, which provides in relevant part:

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

- (1) the name, social security number, address, or telephone number of a crime victim or claimant; or
- (2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

...

(d) An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the victim, including a photograph or other visual representation of the victim. An election under this subsection must be made in writing on a form developed by the governmental body, be signed by the employee, and be filed with the governmental body before the third anniversary of the latest to occur of one of the following:

- (1) the date the crime was committed;
- (2) the date employment begins; or

(3) the date the governmental body develops the form and provides it to employees.

*Id.* § 552.132(b), (d). The remaining information is not held by the crime victim's compensation division of this office; therefore, section 552.132(b) is not applicable to this information. Moreover, there is no indication the remaining information involves a crime victim who is an employee of a governmental body, so as to be subject to section 552.132(d). We therefore conclude the sheriff may not withhold any portion of the remaining information under section 552.132 of the Government Code.

In summary, 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. 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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 396941

Enc. Submitted documents

c: Requestors  
(w/o enclosures)