



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2010

Mr. David Daugherty
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2010-18418

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# 402182 (C.A. File No. 10GEN2012).

The Harris County Constable's Office, Precinct 3 (the "constable") received a request for information related to case number HC10-122828. You state that some responsive information has been released to the requestor. You claim that portions of the remaining requested information are excepted from disclosure under sections 552.101, 552.130, and 552.132 of the Government Code. We have considered the claimed exceptions 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. Section 552.101 encompasses information made confidential by other statutes. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 9-1-1 calls that are provided by a service supplier. These sections apply only to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. Although you

raise section 772.318 for the telephone number of the 9-1-1 caller you have highlighted in the submitted CAD report, we understand Harris County to contain a population of more than two million. Accordingly, we will address your claim under section 772.118. You do not inform us, however, whether the marked information was furnished by a service supplier in an emergency communication district established under chapter 772. Therefore, we will rule conditionally. We find that to the extent the telephone number marked by you is the originating telephone number of the 9-1-1 caller supplied by a 9-1-1 service supplier in a chapter 772 emergency communication district, this information must be withheld under section 552.101 of the Government Code in conjunction with section 772.118(c) of the Health and Safety Code. However, to the extent the marked telephone number was not supplied by a 9-1-1 service supplier in a chapter 772 emergency communication district, section 772.118(c) is not applicable to this information.

Section 552.101 also encompasses 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). 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 (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).

Here, a 9-1-1 caller reported a motor vehicle accident to the police. We conclude that the constable may withhold the name of the 9-1-1 caller, which we have marked in the submitted CAD reports, as well as the name and telephone number of the caller contained in the submitted CD, under section 552.101 in conjunction with the 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). Upon review, however, none of the remaining information may be withheld under section 552.101 based on the informer's privilege.

Next, you have marked information that you claim is excepted from disclosure under section 552.130 of the Government Code. This section excepts from required public disclosure "information [that] relates to (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or] (2) a motor vehicle title or registration issued

by an agency of this state[.]” Gov’t Code § 552.130(a). Therefore, the constable must withhold the information we have marked under section 552.130.¹

Finally, 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 submitted 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. There is no indication that the submitted information involves a crime victim who is an employee of a governmental body, therefore section 552.132(d) is not applicable.

¹ We note this office 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 a Texas license plate number, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

We therefore conclude the constable may not withhold any portion of the remaining information under section 552.132 of the Government Code.

In summary, to the extent the telephone number you marked is the originating telephone number of a 9-1-1 caller supplied by a 9-1-1 service supplier, it must be withheld under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code. The information marked by us that identifies the 9-1-1 caller, as well as the 9-1-1 caller's name and telephone number contained in the submitted CD, may be withheld under section 552.101 in conjunction with the informer's privilege. The motor vehicle information marked by us must be withheld under section 552.130. 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eeg

Ref: ID# 402182

Enc. Submitted documents

c: Requestor
(w/o enclosures)