



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2011

Mr. Jesse Blakley, Jr.
Assistant District Attorney
Brazoria County
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2011-11297

Dear Mr. Blakley:

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# 426079.

The Brazoria County Sheriff's Office (the "sheriff") received a request for information concerning calls for service to the requestor's address from 1999 to the date of the request. You state some of the information was released. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. Section 552.101 encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007(c). Section 58.007 provides:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are

separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Id. § 58.007(c). *See also id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and younger than seventeen years of age). We note section 58.007(c) does not apply to law enforcement records relating to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant. *See id.* § 58.007(c). Upon review, we find the information we have marked involves children engaged in delinquent conduct or conduct indicating a need for supervision after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). Further, it does not appear that any of the exceptions in section 58.007 apply to this information. Accordingly, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Upon further review, we find the remaining information in Exhibit E does not identify a juvenile as a suspect, offender, or defendant. Therefore, the remaining information in Exhibit E may not be withheld under section 552.101 of the Government Code 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). The informer’s privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided 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 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 8 John H. Wigmore, Evidence in Trials at Common Law, § 2374, at 767 (J. 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 state the information contained in the submitted call sheets concerns allegations of criminal violations, and the sheriff has criminal and quasi-criminal law enforcement authority over those matters. We understand the subjects of the information do not know the identity of the complainant in each of these cases. Based on your representations and our review, we find the sheriff may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. Upon further review, however, we find the remaining call sheets relate to informational calls, 9-1-1 hang ups, or other matters that do not concern a violation of a civil or criminal statute. Accordingly, we find

the informer's privilege is not applicable in these situations, and the sheriff may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772, and makes confidential only 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). Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. To the extent the remaining telephone numbers and addresses are the originating telephone number and address provided by a 9-1-1 service supplier, the sheriff must withhold this information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. To the extent the remaining telephone numbers and addresses were not supplied by a 9-1-1 service supplier, section 772.318 is not applicable, and the sheriff may not withhold that information under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The type of information considered highly 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. This office has also determined that some kinds of medical information or information indicating disabilities or specific illnesses are protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate and embarrassing and of no legitimate concern to the public. Accordingly, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure: (1) information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country, and (2) information related to a motor vehicle title or registration issued by an agency of this state or another state or country.¹ Act of May 24, 2011, 82nd

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

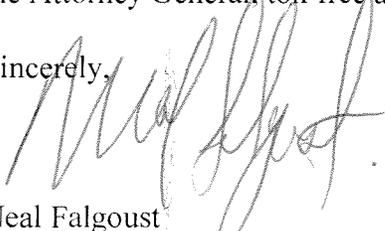
Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). The sheriff must withhold the information we have marked under section 552.130 of the Government Code.²

In summary, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction section 58.007 of the Family Code. The sheriff may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. To the extent the remaining telephone numbers and addresses are the originating telephone number and address provided by a 9-1-1 service supplier, the sheriff must withhold this information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, and the information we have marked under section 552.130 of the Government Code. The remaining information must be released.

Finally, you request a previous determination authorizing the sheriff to redact the complainant's information from a call sheet. We decline to issue such a ruling at this time. 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

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²We note this office has 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 and Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 426079

Enc. Submitted documents

c: Requestor
(w/o enclosures)