



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2011

Ms. Janet I. Monteros
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2011-16449

Dear Ms. Monteros:

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# 435551 (CA-OP-11-348).

The El Paso County Sheriff's Office (the "sheriff") received a request for "dispatch calls and CAD reports" related to the requestor's address, the requestor, and a named individual for a specified time period. You state you are releasing some responsive information to the requestor. You claim some of the submitted information is 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code 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 furnished by a service supplier confidential. *Id.* at 2. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000, and section 772.118 is applicable to a county with a population of more than two million.

You state that El Paso County had a population of 800,647 in 2010, and is part of an emergency communication district established under chapter 772. To the extent the

telephone numbers and addresses you have marked, and the additional information we have marked, are the originating telephone numbers and addresses 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 marked 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 chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov’t Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we find portions of the submitted information, which we have marked, consist of CHRI that is confidential under section 411.083. Thus, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, we find you have not demonstrated the remaining information you have marked constitutes CHRI for purposes of chapter 411 of the Government Code. Accordingly, the remaining marked information 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 seek to withhold the identities of certain complainants in the submitted call sheets. However, you do not inform us what criminal or civil statute was reported to be violated, nor do you explain how the sheriff is responsible for enforcing any such statute. Furthermore, you do not explain how any of the submitted information identifies an informer for purposes of the common-law informer’s privilege. We therefore conclude the sheriff has failed to demonstrate the applicability of the common-law informer’s privilege in this instance. Thus, the sheriff may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the informer’s privilege.

We note section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license or driver’s license issued by an agency of this state or another state or country is excepted from public release.¹ Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov’t Code § 552.130(a)(1)). The sheriff must withhold the driving record information we have marked under section 552.130 of the Government Code.

In summary, to the extent the marked telephone numbers and addresses are the originating telephone numbers and addresses 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 (1) section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and (2) section 552.130 of the Government Code. The remaining information must be released.²

¹The Office of the Attorney General will raise a mandatory exception such as section 552.130 on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note that the information being released contains confidential information to which the requestor has a right of access. *See* Fam. Code § 58.007(e) (child’s parent or guardian may inspect or copy law enforcement records and files concerning that child); Gov’t Code § 552.023(a) (person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests). Thus, if the sheriff receives another request for this particular information from a different requestor, then the sheriff should again seek a decision from this office.

After due consideration, we have decided to grant a previous determination permitting the sheriff to withhold the originating telephone numbers and addresses of 9-1-1 callers provided by a 9-1-1 service supplier under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) that the sheriff must withhold under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code the originating telephone number and address of a 9-1-1 caller furnished to the sheriff by a service supplier established in accordance with chapter 772 of the Health and Safety Code. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the sheriff need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 435551

Enc. Submitted documents

c: Requestor
(w/o enclosures)