



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 6, 2012

Ms. Susan Fillion  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR2012-12286

Dear Ms. Fillion:

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# 461110.

The Harris County Sheriff's Office (the "sheriff's office") received a request for a specified 9-1-1 call recording and transcript. You claim 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as 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 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 only the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. Health & Safety Code § 772.304. Although you seek to withhold the name of a 9-1-1 caller in the submitted information, the plain language of section 772.318 states, and this office has opined, that confidentiality applies to only originating telephone numbers and the addresses associated with those numbers. *See id.* § 772.318(a), (c); Open Records Decision Nos. 649 at 3 (1996) (section 772.318 makes confidential current telephone numbers of subscribers and the

addresses associated with the numbers, and nothing more), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). Therefore, the caller's name may not be withheld under this section.

We understand Harris County is part of an emergency communication district established under chapter 772. You seek to withhold the telephone number of the 9-1-1 caller in the submitted audio recording. We note the telephone number on the audio recording was provided by the caller herself. Thus, this information was not provided by a 9-1-1 service provider. Consequently, you have failed to demonstrate the applicability of section 772.318 to the information on the audio recording, and this information may not be withheld under section 552.101 of the Government Code on that basis. You also seek to withhold the telephone number of the 9-1-1 caller in the submitted documents. You do not inform us, however, whether the information at issue was furnished by a service supplier. Accordingly, we will rule conditionally. If the 9-1-1 caller's telephone number in the submitted documents was furnished by a 9-1-1 service supplier, then 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. But if the information at issue was not furnished by a 9-1-1 service supplier, then it may not be withheld under section 552.101 on the basis of section 772.318 and must be released.

Section 552.101 of the Government Code encompasses the informer's privilege, which has long been recognized by Texas courts. *See 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 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)* (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 (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 indicate the remaining information relates to a report of an alleged violation of the law which could result in civil or criminal penalties. However, you have not identified the civil or criminal statute that is alleged to have been violated. Thus, we find the informer's privilege is not applicable, and the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the informer's privilege.

We note portions of the remaining information are subject to section 552.130(a)(1) of the Government Code.<sup>1</sup> This section provides that information relating to a motor vehicle operator's or driver's license or permit issued by any agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). Accordingly, the sheriff's office must withhold the driver's license information we have marked under section 552.130(a)(1) of the Government Code.

In summary, if the 9-1-1 caller's telephone number in the submitted documents was furnished by a 9-1-1 service supplier, then 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. But if the information at issue was not furnished by a 9-1-1 service supplier, then it may not be withheld under section 552.101 on the basis of section 772.318 and must be released. The sheriff's office must withhold the driver's license information we have marked under section 552.130(a)(1) of the Government Code. The remaining information must be released.<sup>2</sup>

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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

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

<sup>2</sup>We note the remaining information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. See Gov't Code § 552.147(b).

**Ref: ID# 461110**

**Enc. Submitted documents**

**c: Requestor  
(w/o enclosures)**