



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 10, 2012

Ms. Charlotte L. Staples  
For the City of North Richland Hills  
Taylor Olson Adkins Sralla Elam L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2012-14264

Dear Ms. Staples:

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# 464547 (OR# 12-404).

The North Richland Hills Police Department (the "department"), which you represent, received a request for all reports occurring at a specified address during a specified time period. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.109, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We understand you to raise section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). You state the submitted information pertains to concluded criminal cases that did not result in a conviction or deferred adjudication. Based on your representations and our review, we conclude that the department has demonstrated that section 552.108(a)(2) is applicable to the submitted information.

We note section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers

to the basic front-page offense and arrest information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). In this instance, the submitted information consists of call-for-service and computer-assisted dispatch (CAD) records. In Open Records Decision No. 649 (1996), this office concluded information contained in a CAD report is substantially the same as basic information. See ORD 649 at 3; see also Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*; thus, such information is generally public). We note basic information does not include information subject to section 552.130 of the Government Code. Therefore, except for basic information under section 552.108(c), the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.<sup>1</sup>

You claim that some of the basic information is protected by common-law privacy. 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 the doctrine of 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. See *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 satisfied. See *id.* at 681-82. The types 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. See *id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses to be excepted from required public disclosure under 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 have marked portions of the basic information that are highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining basic information is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the remaining basic information may be withheld under section 552.101 on the basis of common-law privacy.

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<sup>1</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against its release.

You claim the common-law informer's privilege for some of the remaining basic information. Section 552.101 of the Government Code 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); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The 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 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 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*. The privilege excepts an 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 complainant in CAD Incident Number 081680323 contacted the department to report a possible violation of law. You do not indicate, nor does it appear, the subject of the complaint knows the identity of the complainant. Based on your representations and our review, we conclude the department may withhold the identifying information of the complainant at issue, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. You also seek to withhold the complainant's identifying information in CAD Incident Number 070290226. However, you do not inform us what criminal or civil statute was reported to be violated. Furthermore, we find none of the information at issue identifies an informer for purposes of the common-law informer's privilege. We therefore conclude the department has failed to demonstrate the applicability of the common-law informer's privilege to any of the basic information in CAD Incident Number 070290226, and none of this information may be withheld under section 552.101 of the Government Code on that basis.

You claim section 552.109 of the Government Code for some of the remaining basic information. Section 552.109 excepts from public disclosure "[p]rivate correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy[.]" Gov't Code § 552.109. This office has held the test to be applied to information under section 552.109 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code, which was discussed above. As previously discussed, we find none of the remaining basic information is intimate or embarrassing and of no legitimate concern. Further, we find you have not demonstrated how any of this information consists of communications of an elected

office holder. Therefore, the department may not withhold any of the remaining basic information under section 552.109 of the Government Code.

You claim section 552.117 of the Government Code for some of the remaining basic information. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. See Gov't Code §§ 552.117, .024. We note, however, that section 552.117 applies only to records that a governmental body is holding in an employment capacity. The information at issue consists of law enforcement records maintained by the department and is not held by the department as an employer. Therefore, we find section 552.117(a) of the Government Code does not apply in this situation, and the department may not withhold any portion of the information you have marked on that basis.

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. When releasing basic information, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the identifying information of the complainant in CAD Incident Number 081680323 under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

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,



Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/som

Ref: ID# 464547

Enc. Submitted documents

c: Requestor  
(w/o enclosures)