



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2012

Mr. David L. Hay
Legal Assistant
Legal Department
Dallas County Community College District
1601 South Lamar, Suite 208
Dallas, Texas 75215-1816

OR2012-18519

Dear Mr. Hay:

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# 471400.

The Dallas County Community College District (the "district") received a request for information pertaining to a specified incident. You inform us the district has released most of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.1175, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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. You raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *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 that the subject of the information

¹Although you also raise section 552.117 for some of the submitted information, we note section 552.1175 is the proper exception to raise in this instance because the district does not hold the information at issue in an employment capacity.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988)*. This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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. 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 have marked the portions of the submitted information you claim are protected by the common-law informer's privilege. Upon review, however, we find this information is related to a witness. We note a witness who provides information in the course of an investigation, but does not make the initial report of a violation, is not an informer for purposes of the common-law informer's privilege. We therefore conclude the district has failed to demonstrate the applicability of the common-law informer's privilege to the information at issue. Thus, the district may not withhold any of the information you have marked under section 552.101 of the Government Code on that basis.

You also seek to withhold the witness information at issue pursuant to Open Records Decision No. 127 (1976). We note, however, Open Records Decision No. 127 is not an exception to disclosure. That decision dealt with information that is excepted from required public disclosure under section 552.108 of the Government Code and summarizes basic and arrest information deemed public by *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). In this instance, the district states it is not relying on section 552.108 as an exception to disclosure of the submitted information. Thus, the district may not withhold any of the submitted information on the basis of Open Records Decision No. 127.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. See 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); see generally Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in subchapter F of chapter 411 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. *See 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 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. You have marked a portion of the submitted information under section 552.101 in conjunction with chapter 411. Upon review, we agree this information constitutes CHRI for purposes of chapter 411. Thus, the district must withhold this information under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code and federal law.³

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See id.* § 552.1175. This section is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 and 5-6 (1988).* Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure.” Gov’t Code § 552.1175(a)(1). You have marked a cellular telephone number belonging to a peace officer employed by the district and held by the district’s police department in its investigative capacity. You inform us this officer has elected to keep this information confidential and pays for the cellular telephone service with his personal funds. Accordingly, the district must withhold the cellular telephone number you have marked under section 552.1175 of the Government Code.

Section 552.130 of the Government Code 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. *Id.* § 552.130(a)(1). You have marked portions of the submitted information under section 552.130. Upon review, we find the district must withhold the driver’s license numbers we have marked under section 552.130 of the Government Code. However, the remaining information you have marked under this section consists of the issuing state of two driver’s licenses. We note the issuing state of a driver’s license is not motor vehicle record information for purposes of section 552.130. Accordingly, the district may not withhold the remaining information you have marked under this section.

In summary, the district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411

³We note an individual may obtain his own CHRI from the Department of Public Safety. *See Gov’t Code* § 411.083(b)(3).

of the Government Code and federal law and the cellular telephone number you have marked under section 552.1175 of the Government Code. The district must withhold the driver's license numbers we have marked under section 552.130 of the Government Code. The district must release the remaining information.⁴

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 471400

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the information being released in this instance contains the requestor's driver's license number and social security number, to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code §§ 552.023(a), .130; Open Records Decision No. 481 at 4 (1987). Section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Additionally, 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 id.* § 552.147(b). Thus, if the district receives another request for this same information from a person who does not have such a right of access, sections 552.130(c) and 552.147(b) authorize the district to redact the requestor's driver's license information and social security number, respectively.