



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

January 28, 2013

Mr. Joseph J. Gorfida  
Assistant City Attorney  
City of Richardson  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2013-01583

Dear Mr. Gorfida:

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# 477166 (City of Richardson File No. 12-835).

The Richardson Police Department (the "department") received a request for all reports pertaining to the requestor at a specified address. You indicate the department will release some of the requested information to the requestor upon her response to a cost estimate letter. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions 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 section 261.201 of the Family Code, which provides in relevant part:

[T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). Upon review, we find incident report number 2012-00100977 was used or developed in the department's investigation of alleged abuse or neglect of a child, and therefore, is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of chapter 261). In this instance, however, the information at issue reflects the requestor is the parent of the child victim and is suspected of having committed the alleged abuse. Accordingly, incident report number 2012-00100977 may not be provided to the requestor pursuant to section 261.201(k). *See id.* § 261.201(k) (parental exception to section 261.201(a) inapplicable where parent alleged to have committed abuse or neglect at issue). Thus, incident report number 2012-00100977 is confidential under section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.<sup>1</sup>

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 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."

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center 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 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). 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 Government Code chapter 411, subchapter F. Upon review, we find the information you have marked constitutes confidential CHRI, which the department must withhold under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.<sup>2</sup>

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. 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.

You have marked information in call for service report numbers 2012-00127553 and 2011-00096069 which you seek to withhold under the common-law informer's privilege. You state the information you have marked identifies complainants who reported violations or possible violations of criminal or civil statutes that carry criminal penalties to the department. You further state the department has criminal law enforcement authority of such violations. The information at issue does not indicate the subject of the complaint in call for service report number 2012-00127553 knows the identity of the complainant. Therefore,

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information. Also, we note an individual may obtain her own CHRI from DPS. Gov't Code § 411.083.

based on your representations and our review, we conclude the department may withhold the complainant's identifying information in call for service report number 2012-00127553, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. *See* Open Records Decision No. 156 (1977) (name of person who makes complaint about another individual to city's animal control division is excepted from disclosure by informer's privilege so long as information furnished discloses potential violation of state law). However, we find the information in call for service report number 2011-00096069 reflects the subject of the complaint knows the identity of the complainant. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.101 of the Government Code also encompasses 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 the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You indicate the City of Richardson is part of an emergency communication district established under section 772.118. You also indicate the telephone numbers and addresses of 9-1-1 callers are furnished to the department by a service supplier. However, upon review, we find you have not demonstrated that the remaining information contains any information relating to a 9-1-1 caller that was furnished by a service supplier. We therefore conclude the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate incident report number 2012-00124288 relates to a pending and active criminal investigation. Based upon this representation, we conclude section 552.108(a)(1) is applicable and the release of incident report number 2012-00124288 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates

law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, 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). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. We note basic information includes a detailed description of the offense, but does not include motor vehicle information encompassed by section 552.130 of the Government Code. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public *Houston Chronicle*). Thus, with the exception of the basic front page offense and arrest information, you may withhold incident report number 2012-00124288 from disclosure based on section 552.108(a)(1) of the Government Code.<sup>3</sup>

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. See *id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You indicate incident report numbers 2011-00070776 and 2012-0082625 relate to crimes that did not result in a conviction or deferred adjudication. However, you have labeled these reports as inactive and you do not inform us these cases have concluded. Therefore, we determine the department has failed to demonstrate incident report numbers 2011-00070776 and 2012-0082625 relate to concluded investigations or prosecutions that did not result in conviction or deferred adjudication. Accordingly, no part of incident report numbers 2011-00070776 and 2012-0082625 may be withheld under section 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130. Upon review, we find the department must withhold the motor vehicle record information you have marked, as well as the motor vehicle information we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold incident report number 2012-00100977 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

of the Family Code. The department must withhold the CHRI you have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The department may withhold the information we have marked in call for service report number 2012-00127553 under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Except for basic information, which must be released, the department may withhold incident report number 2012-00124288 from disclosure under section 552.108(a)(1) of the Government Code. The department must withhold the motor vehicle record information marked under section 552.130 of the Government Code. The remaining information must be released.

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,

A handwritten signature in cursive script, appearing to read 'Kathryn R. Mattingly', written in black ink.

Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 477166

Enc. Submitted documents

c: Requestor  
(w/o enclosures)