



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 7, 2013

Mr. Douglas E. Manning  
Assistant County Attorney  
Orange County District Attorney's Office  
801 Division  
Orange, Texas 77630

OR2013-19486

Dear Mr. Manning:

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# 505330.

The Orange County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified traffic stop. You claim some of the submitted information is exempted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have redacted information from the submitted documents. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), .301(e)(1)(D). You state the sheriff's office has "redacted all references to the identity of the 9-1-1 caller." You do not assert, nor does our review of our records indicate, you have been granted a previous determination to withhold such information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). In this instance, although you generally state the redacted information consists of references to the identity of a 9-1-1 caller, we are unable to discern the specific nature of the information that has been redacted. Thus, we find the sheriff's office has failed to comply with section 552.301 with respect to the redacted information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption.

*Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). You seek to withhold the redacted information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The purpose of the common-law informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person. Thus, the informer's privilege, unlike other claims under section 552.101, may be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the sheriff's office's assertion of the informer's privilege does not provide a compelling reason for non-disclosure under section 552.302, and the sheriff's office may not withhold any portion of the redacted information under section 552.101 on that basis. We also understand you to argue portions of the redacted information must be withheld under section 552.101 of the Government Code in conjunction with sections 771.061 and 772.318 of the Health and Safety Code. Because such claims under section 552.101 can provide compelling reasons to overcome the presumption of section 552.302, we will address these claims under section 552.101 for the redacted information. We will also address your remaining argument against disclosure of the remaining 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. Section 552.101 encompasses information made confidential by other statutes, such as section 771.061 of the Health and Safety Code, which makes confidential "[i]nformation that a service provider of telecommunications service is required to furnish to a governmental entity in providing computerized 9-1-1 service" and "[i]nformation that is contained in an address database maintained by a governmental entity or a third party used in providing computerized 9-1-1 service[.]" Health & Safety Code § 771.061(a). You inform us the sheriff's office operates the 9-1-1 system for Orange County (the "county"). You state telephone service providers furnish computerized information so the identity and telephone number assigned to a calling origin is automatically provided to the 9-1-1 dispatcher. Based upon your representations, we find to the extent any portion of the submitted information was furnished to the sheriff's office by a telecommunications service provider or is contained in an address database used in providing computerized 9-1-1 service, the information is confidential under section 771.061 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. *See also* Open Records Decision No. 661 at 1-2 (1999). However, any information that was not furnished to the sheriff's office by a telecommunications service provider and is not contained in an address database maintained by the sheriff's office or a third party used in providing computerized 9-1-1 service is not confidential under section 771.061, and may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. 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 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). You state the county is part of an emergency communication district established under section 772.318 of the Health and Safety Code. Upon review, we conclude to the extent any portion of the submitted information consists of the originating telephone number or address furnished by a 9-1-1 service supplier, the sheriff's office must withhold such 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 submitted information does not consist of the originating telephone number provided by a 9-1-1 service supplier, it may not be withheld under section 552.101 in conjunction with section 772.318.

Section 552.101 of the Government Code also encompasses 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 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).

You state portions of the unredacted information identify a complainant who reported violations of law to the sheriff's office. Upon review, we find you have not demonstrated how any portion of the unredacted information identifies an individual who made the initial report of a criminal violation to the sheriff's office for purposes of the informer's privilege. Accordingly, the sheriff's office may not withhold any of the information at issue under section 552.101 on that basis.

In summary, to the extent any portion of the submitted information was furnished to the sheriff's office by a telecommunications service provider or is contained in an address database used in providing computerized 9-1-1 service, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with section 771.061 of the Health and Safety Code. To the extent any portion of the submitted information consists of the originating telephone number or address furnished by a 9-1-1 service supplier, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

The sheriff's office must release the remaining information.<sup>1</sup> If you believe the redacted information released pursuant to section 552.302 is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 505330

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>We note the motor vehicle record information being released is generally confidential pursuant to section 552.130 of the Government Code. However, because section 552.130 protects personal privacy, the requestor has a right to his own motor vehicle record information under section 552.023 of the Government Code. *See Gov't Code* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *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). Thus, if the sheriff's office receives another request for this same information from a different requestor, subsection 552.130(c) of the Government Code authorizes the sheriff's office to withhold the motor vehicle record information without the necessity of requesting an attorney general decision.