



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2014

Ms. Sarah R. Martin
Assistant City Attorney
Arlington Police Department
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2014-11755

Dear Ms. Martin:

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# 528412 (Police Dept. Reference No. 15117).

The Arlington Police Department (the "department") received a request for the 9-1-1 calls relating to incidents at two specified addresses. You claim 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.

Section 552.101 of the Government Code exempts 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 section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. Fam. Code § 58.007(c). The relevant language of section 58.007 reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

Id. § 58.007(c), (e). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we agree Exhibit B involves conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining "conduct indicating a need for supervision" for purposes of Fam. Code § 58.007). Thus, Exhibit B is subject to section 58.007(c). However, in this instance, the requestor is a parent of the juvenile suspect. Therefore, Exhibit B may not be withheld from this requestor under section 552.101 of the Government Code in conjunction with section 58.007(c). As you raise no other exceptions against disclosure of Exhibit B, it must be released. *Id.* § 58.007(e).

Next, we address your argument for Exhibit C. Section 552.101 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 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 the subject of the report does not already know their identities. Open Records Decision Nos. 515 at 2-3 (1988), 434 at 1-2 (1986), 208 at 1-2 (1978). For the informer's privilege to apply, the report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at (1990), 515 at 3-4. The privilege affords protection to individuals who report violations of statutes to criminal 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 privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. Open Records Decision No. 549 at 5 (1990).

You state Exhibit C includes the identity of a person who furnished information of possible law violations to the department. Upon review, there is no indication the subject of the investigation knows the identity of the informer. We note in some circumstances, where an oral statement is captured on tape and the voice of the information is recognizable, it may be necessary to withhold the entire audio statement to protect the informant's identity. Open Records Decision No. 434 at 2 (1986). Based on your representations, we find the department may withhold the identifying information we marked in Exhibit C and the entirety of the 9-1-1 call at issue under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find you have failed to demonstrate any of the remaining information consists of identifying information of an informer for purposes of the informer's privilege. Therefore, the department may not withhold any of the remaining information in Exhibit C under section 552.101 of the Government Code on this basis.

In summary, the department may withhold the identifying information we marked in Exhibit C and the entirety of the 9-1-1 call under section 552.101 in conjunction with the common-law informer's privilege. The department must release the remaining information.

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, 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 528412

Enc. Submitted documents

c: Requestor
(w/o enclosures)