



February 28, 2002

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2002-0978

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159141.

The Mesquite Police Department (the "department") received a request for all calls for service and notes made with respect to a particular address for a specified time period. You state that a summary of all calls for service will be released to the requestor. You claim, however, that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that the documents in Tab #3 are excepted from disclosure under section 552.101 of the Government Code in conjunction with the informer's privilege. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected from disclosure under the common-law informer's privilege. The Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure 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 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 Wigmore, Evidence, § 2374, at 767 (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 (1988). Furthermore, as its purpose is to protect the flow of information to the governmental body, rather than to protect the interests of the person who furnishes the information, the informer's privilege, unlike other claims under section 552.101 of the Government Code, can be waived. *See* Open Records Decision Nos. 630 at 4 (1994), 549 at 6 (1990). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You state that there exists an on-going conflict between the requestor and his neighbors regarding street parking. You also state that "as a result of some reported complaints, City Code Enforcement officers issued citations for ordinance violations." You do not indicate, however, which of the complaints at issue in the submitted documents, if any, involved reports of such ordinance violations. Therefore, we are unable to conclude that any of the information in Tab #3 may be withheld under section 552.101 in conjunction with the informer's privilege.

You also contend that portions of the submitted information are confidential under sections 771.061 and 772.118 of the Health and Safety Code. In Open Records Decision No. 649 (1996), which interpreted section 772.318 of the Health and Safety Code, we examined several confidentiality provisions in chapter 772 of the Health and Safety Code. To the extent that the portions of the information containing the highlighted address and telephone numbers involve an emergency 9-1-1 district established in accordance with chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts, the information may be confidential under chapter 772. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier. *See* Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 9-1-1 telephone numbers and addresses. *See* Health & Safety-Code §§ 772.401, *et seq.* Thus, if the emergency communication district here is subject to section 772.118, 772.218, or 772.318, the originating address and telephone numbers are protected from public disclosure under section 552.101 as information deemed confidential by statute.

Next, you contend that portions of the submitted information are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

- (a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We have marked the information in Tab #3 that relates to motor vehicle titles and registrations issued by an agency of the State of Texas. This information must be withheld under section 552.130.

We note that a portion of the information in Tab #3 must be withheld under section 552.101 in conjunction with the common-law right of privacy. The doctrine of common-law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have found that personal financial information not relating to a financial transaction between an individual and a governmental body is protected by common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). We have marked the personal financial information in the submitted documents that must be withheld under section 552.101 in conjunction with common-law privacy.

Finally, we note that the information in Tab #3 appears to contain criminal history record information ("CHRI") generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC"). The dissemination of CHRI obtained from the NCIC network is limited by federal law. See 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). Federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose. Gov't. Code § 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 generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations, and 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. See Open Records Decision No. 565 (1990). We have marked the criminal history information in Tab #3 that the department must withhold under section 552.101 as information made confidential by law.

To summarize, we conclude that: (1) the department must withhold the highlighted address and telephone numbers to the extent the emergency communication district at issue is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code; (2) the department must withhold the information we have marked under section 552.130; (3) the department must withhold the information we have marked under section 552.101 in conjunction with the common-law right of privacy; (4) the department must withhold the criminal history information we have marked in Tab #3 under section 552.101; and (4) the department must release the remaining information in Tab #3.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 159141

Enc: Submitted documents

c: Mr. Lawrence S. Gray
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Mesquite, Texas 75181
(w/o enclosures)