



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 29, 2006

Mr. Peter G. Smith  
Attorney  
Richardson Police Department  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2006-06981

Dear Mr. Smith:

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# 253019.

The Richardson Police Department (the "department") received two requests from the same requestor for all records pertaining to a specific address from 2000 and all records pertaining to a specific incident. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that the submitted incident report may be withheld pursuant to section 552.108 of the Government Code. Section 552.108(a) 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.* § 552.301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, we understand you to argue that the submitted incident report pertains to a pending investigation and prosecution. Based on your representations and our review of the records, we agree that section 552.108 applies to this information. *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases).

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*. 531 S.W.2d at 177. Thus, with the exception of the basic front page offense and arrest information, the department may withhold the submitted incident report from disclosure based on section 552.108(a)(1).<sup>1</sup>

Next, you raise section 552.101 of the Government Code, which 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 chapter 772 of the Health and Safety Code, which makes the originating telephone numbers and addresses of certain 9-1-1 calls confidential. This chapter authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *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 state that the submitted information contains information that was furnished by a 9-1-1 service supplier. However, you do not inform us whether the City of Richardson (the "city") is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. If the city is part of such a district, then the originating telephone number and address of a 9-1-1 caller would be withheld under section 552.101 of the Government Code. We note, however, that the information you seek to withhold under this exception consists solely of the names of 9-1-1 callers. By its terms section 772.218 only applies to "a telephone number . . . and the address associated with the number" and is not applicable to any other information concerning a 9-1-1 call. See Open Records Decision No. 649 (1996) (determining that section 772.218 only makes confidential originating telephone numbers and addresses of 9-1-1 calls contained in computer aided dispatch report, and does not make remainder of report confidential). Accordingly, no portion of the remaining submitted information may be withheld on this basis.

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<sup>1</sup> As our ruling is dispositive, we do not address your remaining arguments for this information, except to note that basic information is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

You further assert that this information is excepted from disclosure pursuant to the informer's privilege. Section 552.101 encompasses the common law informer's privilege, which has been long recognized by Texas courts. *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 a 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). 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 a portion of the remaining information identifies informants. However, you do not explain, nor do the submitted reports indicate, how any of the reports involve an individual reporting a violation of either a criminal or civil statute. Thus, the department has failed to demonstrate the applicability of the informer's privilege and the department may not withhold any of the remaining information pursuant to section 552.101 in conjunction with the informer's privilege.

You also argue that the remaining information is subject to common law privacy. Section 552.101 encompasses the doctrine of common law privacy. Common law privacy protects information if 1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and 2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, this office has found that the names, addresses, and telephone numbers of members of the public are not excepted from required public disclosure under common law privacy. *See* Open Records Decision No. 455 (1987) (absent special circumstances, the

home addresses and telephone numbers of private citizens are generally not protected under the Act's privacy exceptions). Upon review, we conclude that the department has failed to demonstrate how any portion of the remaining information constitutes highly intimate or embarrassing information for the purpose of common law privacy. Thus, no portion of the remaining information may be withheld on this basis.

In summary, with the exception of basic information, the submitted incident report may be withheld pursuant to section 552.108 of the Government Code. The remaining information must be released.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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. 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,

A handwritten signature in cursive script that reads "Margaret Cecere". The signature is written in black ink and is positioned above the typed name.

Margaret Cecere  
Assistant Attorney General  
Open Records Division

MC/sdk

Ref: ID# 253019

Enc. Submitted documents

c: Ms. Josette Brooks  
P.O. Box 795045  
Dallas, Texas 75379  
(w/o enclosures)