



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 20, 2009

Ms. Nicole B. Webster
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2009-00768

Dear Ms. Webster:

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# 336640 (Waco Reference# LGL-08-1184).

The Waco Police Department (the "department") received a request for information pertaining to a specified 9-1-1 call. You claim some of the requested information is excepted 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 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 protected by other statutes, such as section 772.318 of the Health and Safety Code. You contend that the originating telephone number and address of the 9-1-1 caller contained in the submitted information are excepted under section 552.101 in conjunction with section 772.318. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). We understand that the City of Waco is part of an emergency communication district that was established under section 772.318 and that the 9-1-1 caller's telephone number and

address were provided by a 9-1-1 service provider.¹ Thus, based on your representations and our review, we agree some of the information you have highlighted in pink consists of an originating telephone number and address of a 9-1-1 caller the department must withhold under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. We note, however, that the information pertaining to the closest intersection does not constitute an originating telephone number or address for the purposes of section 772.318. This information, which we have marked for release, is not confidential under section 772.318, and may not be withheld under section 552.101 on that basis.

You also raise section 552.101 in conjunction with 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 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. *See Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978)*. The 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." *See 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 the informer's identity. *See Open Records Decision No. 549 at 5 (1990)*.

You state the remaining information you have marked identifies an individual who reported an alleged crime to the department. Thus, based on your representations and our review, we conclude that the department has demonstrated the applicability of the common-law informer's privilege in this instance. Thus, the department may withhold the informer's identifying information, which you have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, except for the information we have marked for release, the department must withhold the pink-highlighted originating telephone number and address under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department may withhold the informer's identifying information under section 552.101 of the Government Code in conjunction with the informer's privilege. The remaining submitted information must be released to the requestor.

¹Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

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, 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 at (512) 475-2497.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/jb

Ref: ID# 336640

Enc. Submitted documents

cc: Requestor
(w/o enclosures)