



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 12, 2009

Mr. Stephen R. Alcorn
Assistant City Attorney
City of Grand Prairie
P.O. Box 53404
Grand Prairie, Texas 75053-4045

OR2009-03286

Dear Mr. Alcorn:

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# 337074.

The Grand Prairie Police Department (the "department") received a request for information, including audio recordings, pertaining to 9-1-1 calls made on three specified dates regarding a specified address. You state the department has provided some of the requested information to the requestor. You claim the identifying information of the reporting party in the requested calls for service reports and corresponding audio recordings is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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

¹Although you acknowledge the submitted representative sample of information pertains to dates different than the dates specified in the request, you have determined the submitted information is responsive to the request. *Cf.* Open Records Decision No. 561 at 7 (1990) (governmental body must make a good faith effort to relate a request to information held by it). Furthermore, we assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Code § 552.101. This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You claim the submitted calls for service reports and their corresponding audio recordings were used or developed in alleged child abuse investigations. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Upon review, we agree some of the calls for service reports, which we have marked, are within the scope of section 261.201. You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we conclude the calls for service reports we have marked, and their corresponding audio recordings, are confidential pursuant to section 261.201 of the Family Code and must be withheld pursuant to section 552.101 of the Government Code.² The remaining information does not pertain to investigations of alleged or suspected child abuse or neglect. Therefore, no part of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You assert some of the remaining information is protected by the informer’s privilege. 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 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. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The

²As our ruling for this information is dispositive, we need not address your remaining argument against disclosure of this information.

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). 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).

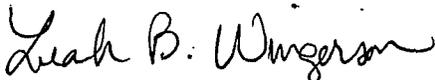
You contend the remaining calls for service reports reveal the identity of a complainant who reported possible criminal violations to the department. You do not indicate, nor does it appear, the requestor knows the identity of the complainant. Based on your representation and our review, we conclude the department may withhold the complainant's identifying information we have marked in the remaining calls for service reports, as well as the corresponding audio recordings in their entirety, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, the department must withhold the calls for service reports we have marked, and their corresponding audio recordings, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department may withhold the complainant's identifying information we have marked in the remaining calls for service reports, as well as the corresponding audio recordings in their entirety, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The remaining information must be released.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/cc

Ref: ID# 337074

Enc. Submitted documents

cc: Requestor
(w/o enclosures)