ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2009

Ms. Bonnie Lee Goldstein
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P. O. Box 140940
Dallas, Texas 75214-0940

OR2009-06877

Dear Ms. Goldstein:

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# 343608.

The City of Princeton (the "city"), which you represent, received a request for a named employee's cellular telephone records for a specified time period. You state the city does not possess any records for a portion of the requested time period.[1] You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code.[2] We have considered the exceptions you claim and reviewed the submitted representative sample of information.[3]

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

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[1]The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

[2]We note that you have submitted a memorandum from the chief of police to this office for informational purposes. Because this memorandum is not responsive to the request, we do not address it in this ruling.

[3]We assume that 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 that 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. Chapter 772 of the Health and Safety Code 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, depending on the population of the county in which it is located. *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 as part of a computerized 9-1-1 service. *Id.* at 2. You assert that 772.318 applies to some of the submitted information. However, you do not state whether the city's system is an emergency 9-1-1 district established in accordance with chapter 772. Further, you do not state, nor does the submitted information reflect, that any of the information was obtained from a service provider as part of a computerized 9-1-1 service. Accordingly, none of the submitted information is confidential under section 552.101 in conjunction with any provision of chapter 772 of the Health and Safety Code.

You also raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See, e. g., 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 that the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 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 1-2 (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 (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 claim the informer's privilege for the telephone numbers of informers, witnesses, crime victims, and complainants you have marked under category three in the submitted phone records. However, you have not identified the laws that were allegedly violated, nor have you explained whether the alleged violations carry any civil or criminal penalties. Further, witnesses who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of the informer's privilege. You have also not identified which of the individuals whose telephone numbers you have marked are informants for the purposes of the informer's privilege. We therefore conclude that the city has failed to meet its burden in demonstrating that the informer's privilege is applicable to any of the submitted information. *See* Gov't Code § 552.301(e)(1)(A), Open Records Decision Nos. 542 (1990) (concluding that Act places on governmental body burden of establishing why and how exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). Accordingly, the city may not withhold any of the submitted information under section 552.101 in conjunction with the informer's privilege.

Section 552.108(b)(1) excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." Gov't Code § 552.108(b)(1). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). You claim that the marked officers' cellular telephone numbers are excepted from disclosure under section 552.108. In Open Records Decision No. 506 (1988), this office determined that the statutory predecessor to section 552.108(b) excepted from disclosure "cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities." ORD 506 at 2. We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.* You inform us the telephone numbers marked under category four are used by undercover investigators, peace officers, federal agents, and the city's chief of police in carrying out their law enforcement responsibilities. You assert that release of these telephone numbers would interfere with law enforcement. Based on your representations and our review of the information at issue, we conclude that the city may withhold the cellular telephone numbers identified in category four under section 552.108(b)(1) of the Government Code.

Next, you claim that the telephone numbers you have marked under categories one and two are excepted from disclosure under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. We also note that section 552.117(a)(2) encompasses a peace officer's cellular telephone and pager numbers if the officer personally pays for the cell or pager service. *See* Open Records Decision No. 670 at 6 (2001); *see also* ORD 506 at 5-6 (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. You state the telephone numbers you have marked under categories one and two of the request consist of the home telephone or personal cellular telephone numbers of peace officers and telephone numbers that would reveal family members of peace officers. Accordingly, we conclude the city must withhold the telephone numbers you have marked under categories one and two under section 552.117(a)(2) of the Government Code.

Lastly, we note that a portion of the submitted information is excepted from disclosure under section 552.136 of the Government Code, which states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that

is collected, assembled, or maintained by or for a governmental body is confidential."[4] Gov't Code § 552.136. Therefore, the city must withhold the cellular telephone account number we have marked under section 552.136 of the Government Code.

In summary, the city may withhold the telephone numbers identified in category four under section 552.108(b)(1) of the Government Code. The city must withhold the telephone numbers you have marked in categories one and two under section 552.117(a)(2) of the Government Code. The city must also withhold the cellular telephone account number we have marked under section 552.136 of the Government Code. 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,

Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID# 343608

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[4]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).