



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 18, 2015

Mr. Douglas E. Manning
Assistant County Attorney
Orange County District Attorney's Office
801 Division Avenue
Orange, Texas 77630

OR2015-05232

Dear Mr. Manning:

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# 556803.

The Orange County Sheriff's Office (the "sheriff's office") received a request for a specified 9-1-1 call and two specified reports. We understand the sheriff's office has redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹ You claim the submitted 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.

Initially, we note you have redacted information from the submitted documents. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), (e)(1)(D). You state the sheriff's office has "redacted all references to the

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(a), (c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

identity of the 9-1-1 caller.” We note you have also redacted dates of birth and phone numbers. You do not assert, nor does our review of our records indicate, you have been granted a previous determination to withhold such information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). Therefore, this information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. Because we are able to discern the nature of the redacted information, we will address its public availability. In the future, the sheriff’s office should refrain from redacting responsive information that it submits to this office in connection with a request for an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code or may be withheld pursuant to statutory authority. *See Gov’t Code* §§ 552.301(e)(1)(D), .302. Failure to do so may result in the presumption the redacted information is public. *See id.* § 552.302.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 771.061 of the Health and Safety Code, which makes confidential “[i]nformation that a service provider of telecommunications service is required to furnish to a governmental entity in providing computerized 9-1-1 service” and “[i]nformation that is contained in an address database maintained by a governmental entity or a third party used in providing computerized 9-1-1 service[.]” Health & Safety Code § 771.061(a). You inform us the sheriff’s office operates the 9-1-1 system for Orange County (the “county”). You state telephone service providers furnish computerized information so the identity and telephone number assigned to a calling origin is automatically provided to the 9-1-1 dispatcher. We note the caller information in the submitted audio recording was provided directly by the 9-1-1 caller at issue. Therefore, the sheriff’s office may not withhold any portion of the submitted audio recording under section 552.101 of the Government Code in conjunction with section 771.061 of the Health and Safety Code. However, based upon your representations and our review, we find to the extent any portion of the submitted documents was furnished to the sheriff’s office by a telecommunications service provider or contains information from an address database used in providing computerized 9-1-1 service, such information is confidential under section 771.061 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. *See also* Open Records Decision No. 661 at 1-2 (1999). However, any information that was not furnished to the sheriff’s office by a telecommunications service provider or is not contained in an address database maintained by the sheriff’s office or a third party used in providing computerized 9-1-1 service is not confidential under section 771.061 of the Health and Safety Code and may not be withheld under section 552.101 of the Government Code on that basis.

To the extent the information in the submitted documents is not confidential under section 771.061, we address your claim under section 552.101 of the Government Code in

conjunction with section 772.318 of the Health and Safety Code for that information, as well as the remaining information. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). You state the county is part of an emergency communication district established under section 772.318 of the Health and Safety Code. As noted above, the caller information in the submitted audio recording was provided directly by the 9-1-1 caller at issue. Therefore, the sheriff's office may not withhold any portion of the submitted audio recording under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, based upon your representations and our review, we conclude to the extent any portion of the submitted documents contains the originating telephone number or address of a 9-1-1 caller furnished by a 9-1-1 service supplier, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. To the extent the submitted documents do not contain the originating telephone number or address of a 9-1-1 caller provided by a 9-1-1 service supplier, such information may not be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses 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). 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. *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) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. 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 (1988).

You state releasing the submitted information would violate the informer's privilege. However, the request reflects the requestor, who is the subject of the complaint, knows the identity of the complainant. Accordingly, we find you have failed to demonstrate the applicability of the common-law informer's privilege to the submitted information. Accordingly, the sheriff's office may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, to the extent any portion of the submitted documents was furnished to the sheriff's office by a telecommunications service provider or contains information from an address database used in providing computerized 9-1-1 service, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with section 771.061 of the Health and Safety Code. To the extent any portion of the submitted documents contains the originating telephone number or address of a 9-1-1 caller furnished by a 9-1-1 service supplier, the sheriff's office must withhold such information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The sheriff's office must release the remaining information, including the submitted audio recording.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 556803

Enc. Submitted documents

c: Requestor
(w/o enclosures)