



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 18, 2015

Ms. Beverly West
Assistant County Attorney
Legal Department
County of Galveston
722 Moody Street, 5th Floor
Galveston, Texas 77550

OR2015-24271

Dear Ms. West:

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# 587664.

The Galveston County Sheriff's Office (the "sheriff's office") received a request for all records pertaining to a named individual for a specified time period. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.¹ 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. The city raises 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 from disclosure the identities of persons who report activities over which the governmental body has criminal

¹Although you also raise Texas Rule of Evidence 508, we note the proper exception to raise when asserting the informer's privilege for information not subject to section 552.022 of the Government Code is section 552.101 of the Government Code in conjunction with the common-law informer's privilege. *See* Open Records Decision Nos. 677 (2002), 676 at 6 (2002).

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 claim the informer's privilege for the identities of informers who requested a mental health evaluation for the named individual. However, you have failed to demonstrate the named individual was reported to have violated a criminal or civil statute, or demonstrate the report was initially made to a governmental body having criminal or quasi-criminal law-enforcement authority of the activity at issue. Accordingly, the sheriff's office may not withhold any of the submitted information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm." *Id.* In applying this standard, the court noted "deference must be afforded" law enforcement experts regarding the probability of harm, but further cautioned, "vague assertions of risk will not carry the day." *Id.* at 119.

You state the submitted information reveals the identifies of persons who furnished information about the named individual, who they believed presented a substantial risk of harm to herself or others. You assert releasing the identifying information of the persons at issue would subject them to a substantial risk of physical harm. Upon review, however, we find you have not demonstrated how disclosure of the submitted information subjects the persons at issue to a substantial risk of physical harm. Thus, the sheriff's office may not withhold the remaining information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. As you do not raise any other exceptions, the sheriff's office must release the submitted information.²

²We note the requestor has a special right of access to some of the information being released. Gov't Code § 552.023. Accordingly, if the governmental body receives another request for this same information from a different requestor, the governmental body must again seek a ruling from this office.

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,

A handwritten signature in cursive script that reads "Ramsey Abarca".

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/som

Ref: ID# 587664

Enc. Submitted documents

c: Requestor
(w/o enclosures)