



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 11, 2015

Ms. Nicole F. Stratso
Assistant County Attorney
Hood County Attorney's Office
1200 West Pearl Street
Granbury, Texas 76048

OR2015-26013

Dear Ms. Stratso:

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# 590346.

Hood County Animal Control (the "county") received a request for information pertaining to a specified address. You state the county released some information. The county states it redacted some motor vehicle record information under section 552.130(c) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have redacted portions of the submitted information. 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 you have redacted motor vehicle record information pursuant to section 552.130 of the Government Code.² However, you do not assert, nor does

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(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).

²As previously noted, section 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. Gov't Code § 552.130(c)-(e).

our review of our records indicate, the county has been authorized to withhold the remaining redacted information without seeking a ruling from this office. *Id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, 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. In this instance, we can discern the nature of the remaining redacted information. In the future, however, the county should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. You acknowledge the county is not a law enforcement agency. However, this office has concluded section 552.108 may be invoked by any proper custodian of information that relates to the underlying incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983). Where a non-law enforcement agency has custody of information related to an ongoing criminal investigation of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information is related to an ongoing criminal investigation and a representation from a law enforcement entity that it wishes to have the information withheld. You state the investigation at issue resulted in citations written by the county under section 826.034 of the Health and Safety Code, and a violation of this statute is a criminal offense. You inform us the citations were filed in the Hood County Justice of the Peace, Precinct Number Two, and the citations are still pending. However, you have not otherwise demonstrated any investigative agency with a law enforcement interest seeks to withhold the information at issue. Accordingly, the county failed to demonstrate section 552.108(a)(1) of the Government Code is applicable to the information at issue, and, thus, the county may not withhold any portion of the submitted information on that basis.

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. This section encompasses information protected by other statutes, including chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. Health & Safety Code § 772.304.

We understand the county is part of an emergency communication district subject to section 772.318 of the Health and Safety Code. You assert the telephone number of a 9-1-1 caller you marked in the submitted information is confidential under section 772.318. Upon review, we conclude that, to the extent the information you marked is information furnished by a 9-1-1 service supplier and consists of the originating telephone number of a 9-1-1 caller, the county must withhold such information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, if the information at issue was not supplied by a 9-1-1 service supplier, then the county may not withhold this information under section 552.101 on the basis of 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 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 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 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 4-5 (1988)*.

You state the information you marked in Exhibit F identifies an individual who reported a possible violation of section 826.034 of the Texas Health and Safety Code to the county. You assert the alleged violation is within the scope of the county's enforcement authority. You also state a violation of this section is a misdemeanor offense. You assert the subject of the complaint does not know the identity of the complainant. Therefore, we conclude the county may withhold the information you marked in Exhibit F under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. *See Open Records Decision No. 156 (1977)* (name of person who makes complaint about another individual to city's animal control division is excepted from disclosure by informer's privilege so long as information furnished discloses potential violation of state law).

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*,

No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.³ *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Thus, the county must withhold the public citizen's date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

As previously noted, the county redacted some motor vehicle record information under section 552.130(c) of the Government Code. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the county must withhold the motor vehicle record information you redacted, and the additional information we marked, under section 552.130 of the Government Code.

In summary, to the extent the information the county marked is information furnished by a 9-1-1 service supplier and consists of the originating telephone number of a 9-1-1 caller, the county 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 county may withhold the information it marked in Exhibit F under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The county must withhold the public citizen's date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The county must withhold the motor vehicle record information it redacted, and the additional information we marked, under section 552.130 of the Government Code. The county must release the remaining information.⁴

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.

³Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

⁴We note the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that party's representative, solely on grounds that information is considered confidential by privacy principles).

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 590346

Enc. Submitted documents

c: Requestor
(w/o enclosures)