



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 12, 2017

Mr. Oscar G. Gabaldon, Jr.
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2017-16702

Dear Mr. Gabaldon:

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# 667930 (City Case #17-1026-8485).

The El Paso Police Department (the "department") received a request for information pertaining to a specified address for a specified period of time. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, we note the department seeks to withhold the telephone numbers and addresses of 9-1-1 callers. In Open Records Letter No. 2003-00708 (2003), this office issued a previous determination to the department authorizing it to withhold the originating telephone number

¹Although the department also raises section 552.101 of the Government Code in conjunction with constitutional privacy for the submitted information, the department provides no arguments explaining how this doctrine applies to the information at issue. Therefore, we assume the department no longer asserts this doctrine. *See* Gov't Code §§ 552.301, .302.

²We 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 that those records contain substantially different types of information than that submitted to this office.

and address of a 9-1-1 caller furnished to the department by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code without requesting a decision from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Provided the originating telephone numbers and addresses of the 9-1-1 callers at issue were furnished by a service supplier established in accordance with chapter 772, the department must withhold the telephone numbers and addresses at issue in accordance with the previous determination issued in Open Records Letter No. 2003-00708.

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. Section 552.101 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 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 Nos. 515 at 3 (1998), 208 at 1-2 (1978). The 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 (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. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

You assert portions of the submitted information are protected from public disclosure pursuant to the informer's privilege because they identify individuals who furnished information of possible violations of law to officers charged with the enforcement of those laws. However, you have failed to identify a civil or criminal violation that was reported, nor have you explained the reported incident carries civil or criminal penalties. Thus, we find the department has not met its burden in adequately demonstrating 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, 252 (1980). Consequently, the department may not withhold any information under section 552.101 of the Government Code in conjunction with the informer's privilege. As no other exceptions to disclosure have been raised, the department must release the remaining information.

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 black ink, appearing to read "D. Michelle Case", followed by a horizontal flourish.

D. Michelle Case
Attorney
Open Records Division

DMC/sdk

Ref: ID# 667930

Enc. Submitted documents

c: Requestor
(w/o enclosures)