



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 21, 2017

Mr. Peter G. Smith
City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2017-19070

Dear Mr. Smith:

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# 671761 (ORR# 17-454).

The Richardson Police Department (the "department") received a request for a specified search warrant affidavit. You state you have released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note some of the submitted information is subject to section 552.152 of the Government Code.¹ Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You state some of the submitted information reveals the identities of undercover police officers. Upon review, we find section 552.152 is applicable to the identities of the undercover officers within the information at issue. Accordingly, the

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

department must withhold the identifying information of the undercover officers, which we marked, under section 552.152 of the Government Code.²

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. This section encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F or subchapter E-1 of the Government Code. *See Gov’t Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F or subchapter E-1 of the Government Code. Upon review, we find the information we marked consists of CHRI the department must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.³ However, none of the remaining information constitutes CHRI for purposes of section 411.083, and it may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses sections 772.118, 772.218, and 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 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 that are furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

You claim some of the remaining information, which you marked, is subject to section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. You do not inform us, however, whether the City of Richardson is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318. Further, we find the information you marked does not consist of the originating telephone number or address of a 9-1-1 caller and it may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the 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); *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 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). However, individuals who provide information in the course of an investigation are not informants for the purposes of claiming the informer's privilege.

You assert some of the remaining information identifies informants who reported possible violations of law to the department. However, upon review, we find you have failed to demonstrate any of the remaining information at issue identifies an informer for purposes of the informer's privilege. Accordingly, the department may not withhold any remaining information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We conclude the department must withhold the information we marked under section 552.130 of the Government Code. However, none of the remaining information you marked is subject to section 552.130 of the Government Code, and the department may not withhold it on that basis.

We note the remaining information includes an e-mail address of a member of the public that is subject to section 552.137 of the Government Code. Section 552.137 of the Government

Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail address we have marked is not one of the types specifically excluded by section 552.137(c). *See id.* § 552.137(c). Accordingly, the department must withhold the e-mail address we marked under section 552.137, unless the owner of the address affirmatively consents to its release.

In summary, the department must withhold the information we marked under section 552.152 of the Government Code. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold the information we marked under section 552.130 of the Government Code. The department must withhold the e-mail address we marked under section 552.137, unless the owner of the address affirmatively consents to its release. 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/bw

Ref: ID# 671761

Enc. Submitted documents

c: Requestor
(w/o enclosures)