



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 7, 2020

Ms. Karen Strand
Senior Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2020-03671

Dear Ms. Strand:

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# 816943.

The Mesquite Police Department (the "department") received a request for a specified arrest report pertaining to a named individual. You claim some of the submitted information is exempted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses information protected by section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except 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). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411. Upon review, we find the information you marked consists of CHRI that is confidential under section 411.083. Thus, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.¹

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). We note a witness who provides information in the course of an investigation, but does not report a violation, is not an informer for purposes of the common-law informer's privilege.

You contend portions of the submitted information reveal the identity of an informer who reported possible criminal violations of law to the department. We have no indication the subject of the report knows the informer's identity. Based on your representations and our review, we conclude the information you have marked identifies a complainant; thus, the department may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See Id.* § 552.130. Accordingly, the department must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

¹ We note the requestor can obtain her own CHRI from DPS. Gov't Code § 411.083(b)(3).

In summary, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The department must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Jesse Harvey
Assistant Attorney General
Open Records Division

JHI/rm

Ref: ID# 816943

Enc. Submitted documents

c: Requestor
(w/o enclosures)