



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2020

Ms. Mary E. Miller
Assistant District Attorney
Denton County
127 North Woodrow Lane, Suite 300
Denton, Texas 76205

OR2020-32184

Dear Ms. Miller:

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# 859766 (ORR# 4581, 4582).

The Denton County Sheriff's Office (the "sheriff's office") received two requests from the same requestor for information related to incidents involving two specified addresses and certain named individuals.¹ You state the sheriff's office has released some information to the requestor. You claim some of the submitted information is excepted 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 552.130 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). Upon review, we find the submitted video recording contains information subject to section 552.130 not belonging to the requestor. You state the sheriff's office does not have the technological capability to redact the motor

¹ We note the sheriff's office sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code, and the requestor accepted the cost estimate. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). We understand the sheriff's office received the required payment on October 12, 2020. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

vehicle record information from the recording at issue. Accordingly, the sheriff's office must withhold the submitted video recording in its entirety under section 552.130 of the Government Code.² See Open Records Decision No. 364 (1983).

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 chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. See Open Records Decision No. 649 (1996). You indicate the sheriff's office is part of an emergency communication district that is subject to section 772.318. You state some of the remaining information consists of the originating telephone numbers and addresses of 9-1-1 callers furnished to the sheriff's office by a service supplier. Thus, the sheriff's office must withhold the originating telephone number and address of the 9-1-1 caller you marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, we note section 772.318 does not apply to 9-1-1 callers' names. Thus, the sheriff's office may not withhold the 9-1-1 caller's name you marked under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987).

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information protected by 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); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal

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

or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 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 (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. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You assert portions of the remaining information are protected from public disclosure pursuant to the informer's privilege. However, we find you have neither identified a civil or criminal violation that was reported nor explained the civil or criminal penalties associated with the incident at issue. Thus, we find you have failed to demonstrate the applicability of the informer's privilege to the information at issue, and no portion of the remaining information may be withheld on that basis.

In summary, the sheriff's office must withhold the submitted video recording in its entirety under section 552.130 of the Government Code. The sheriff's office must withhold the originating telephone number and address of the 9-1-1 caller you marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office 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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/mo

Ref: ID# 859766

Enc. Submitted documents

c: Requestor
(w/o enclosures)