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Alicia K. Kreh
akreh@toase.com

April 8, 2021

Christian Duke



Re: *Public Information Act Request Received by the City of Boerne on March 26, 2021*

Dear Mr. Duke:

The City received your request for information on March 26, 2021. Enclosed is a portion of the information responsive to your request. The rest of the responsive information has been submitted to the Attorney General for a ruling.

The City understands the rights of all citizens to make requests for public information and invites all citizens to avail themselves of that right. Should you have any questions, please do not hesitate to contact me. Of course, all questions may also be forwarded to the Office of the Texas Attorney General, Open Government Hotline, at (512) 478-6736 or toll-free at 1-877-673-6839.

Sincerely,

Alicia K. Kreh

AKK/jlw
Enclosures

Call Sheet Report

BOERNE POLICE DEPARTMENT

Officer [REDACTED] **Agency** BOERNE PD **Primary Officer** Y **for Unit** 348
Assigned 16:16:09 **Enroute** 16:16:45 **Arrived** 16:36:49 **De-assigned** **Cleared** 17:19:53 **Total Time** 00:43:04
To Station **At Station** **Disposition** CONTACT / NO REPORT NEEDED
Case Numbers B2003559

Officer RICARDO GOMEZ **Agency** BOERNE PD **Primary Officer** Y **for Unit** 349
Assigned 19:17:41 **Enroute** 19:17:44 **Arrived** 19:17:54 **De-assigned** **Cleared** 19:47:55 **Total Time** 00:30:01
To Station **At Station** **Disposition** UNABLE TO LOCATE
Case Numbers

Officer RICARDO GOMEZ **Agency** BOERNE PD **Primary Officer** Y **for Unit** 349
Assigned 20:18:28 **Enroute** 20:21:14 **Arrived** 20:26:12 **De-assigned** **Cleared** 20:55:31 **Total Time** 00:29:19
To Station **At Station** **Disposition** CONTACT / NO REPORT NEEDED
Case Numbers

Radio Messages

Date	Time	Entered By	Officer	Description
08/13/2020	16:16:09	WATERS, TAMMY	[REDACTED]	UNIT ASSIGN
08/13/2020	16:16:45	WATERS, TAMMY	[REDACTED]	UNIT ENROUTE
08/13/2020	16:36:50	WATERS, TAMMY	[REDACTED]	UNIT ARRIVE
08/13/2020	17:19:50	WATERS, TAMMY	[REDACTED]	UNIT CASE NUMBER GENERATED Case Number: B2003559
08/13/2020	17:19:53	WATERS, TAMMY	[REDACTED]	CALL CLEARED
08/13/2020	17:19:53	WATERS, TAMMY	[REDACTED]	UNIT CLEARED
08/13/2020	19:16:48	WATERS, TAMMY	WATERS, TAMMY	CALL REOPENED Previous Disposition: CONTACT / NO REPORT NEEDED Previous Clear Time: 17:19:53
08/13/2020	19:17:42	WATERS, TAMMY	GOMEZ, RICARDO	UNIT ASSIGN
08/13/2020	19:17:44	WATERS, TAMMY	GOMEZ, RICARDO	UNIT ENROUTE
08/13/2020	19:17:55	WATERS, TAMMY	GOMEZ, RICARDO	UNIT ARRIVE
08/13/2020	19:18:33	WATERS, TAMMY	GOMEZ, RICARDO	UNIT CHANGE LOCATION CASE # B2003559
08/13/2020	19:37:27	GOMEZ, RICARDO	GOMEZ, RICARDO	UNIT WELFARE CHECK Previous check time: 19:17:54 Current check time: 19:37:27 Welfare limit time: 00:04
08/13/2020	19:42:52	GOMEZ, RICARDO	GOMEZ, RICARDO	UNIT WELFARE CHECK Previous check time: 19:37:27 Current check time: 19:42:52 Welfare limit time: 00:04
08/13/2020	19:47:44	GOMEZ, RICARDO	GOMEZ, RICARDO	UNIT WELFARE CHECK Previous check time: 19:42:52 Current check time: 19:47:44 Welfare limit time: 00:04
08/13/2020	19:47:55	GOMEZ, RICARDO	GOMEZ, RICARDO	CALL CLEARED
08/13/2020	19:47:55	GOMEZ, RICARDO	GOMEZ, RICARDO	UNIT CLEARED
08/13/2020	20:18:02	PADILLA, TRACIE	PADILLA, TRACIE	CALL REOPENED Previous Disposition: UNABLE TO LOCATE Previous Clear Time: 19:47:55
08/13/2020	20:18:29	WATERS, TAMMY	GOMEZ, RICARDO	UNIT ASSIGN
08/13/2020	20:21:14	WATERS, TAMMY	GOMEZ, RICARDO	UNIT ENROUTE
08/13/2020	20:26:12	WATERS, TAMMY	GOMEZ, RICARDO	UNIT ARRIVE
08/13/2020	20:39:21	WATERS, TAMMY	GOMEZ, RICARDO	UNIT CHANGE LOCATION CYPRESS GRILL
08/13/2020	20:47:32	GOMEZ, RICARDO	GOMEZ, RICARDO	UNIT WELFARE CHECK Previous check time: 20:26:12 Current check time: 20:47:32 Welfare limit time: 00:04
08/13/2020	20:55:32	WATERS, TAMMY	GOMEZ, RICARDO	CALL CLEARED
08/13/2020	20:55:32	WATERS, TAMMY	GOMEZ, RICARDO	UNIT CLEARED

Caller Information

Name CHRISTIAN [REDACTED] **Phone** 4155331211 **Call From Address** **Contact?** N **Employer / Work Phone**

Call Sheet Report
BOERNE POLICE DEPARTMENT



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Alicia K. Kreh
akreh@toase.com

April 8, 2021

Honorable Ken Paxton
Attorney General of Texas
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711-2548

*Re: Public Information Act Request of Christian Duke Received by the City of Boerne
on March 26, 2021*

Dear General Paxton:

I represent the City of Boerne in regard to the above-referenced matter. On March 26, 2021 the City received the public information request from Christian Duke attached hereto as Exhibit A. Please note that the City offices were closed on Friday April 2, 2021 in observance of Good Friday.

Pursuant to Section 552.301 of the Public Information Act (the "Act"), the City requests your determination regarding whether the responsive information falls within an exception to disclosure. The information the City believes may be withheld is attached hereto as Exhibit B. In particular, the City believes that the following exceptions apply:

I. Common Law Informer's Privilege

The City believes that portions of the responsive information, enclosed and marked as Exhibit B, may be withheld pursuant to 552.101 of the Act in conjunction with 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 the identities of persons who report activities over which the governmental body has criminal law enforcement authority, provided that the subject of the information does not already know the informer's identity. *See Tex. Att'y Gen. ORD-515 at 3 (1998), 208 at 1-2 (1978)*. The privilege also protects the identities of individuals who report violations of statutes to the police agencies and 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." *See Tex. Att'y Gen. ORD-279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961))*. For the privilege to apply, the individual must report a violation of a criminal or civil statute. *See Tex. Att'y Gen. ORD-582 at 2 (1990), 515 at 4-5 (1988)*. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See Tex. Att'y Gen. ORD-549 at 5 (1990)*.

The documents marked as Exhibit B contain information that reveals the identities of informants who have reported information to the police regarding potential criminal activities and violations of law occurring at their establishment. Therefore, the City seeks to withhold identifying information about these informants under Section 552.101 in conjunction with the common law informer's privilege.

II. Previous Determination

Your office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an Attorney General decision. Additionally, your office has held that a governmental body may redact a living person's social security number without the necessity of requesting an Attorney General decision. Therefore, the City has not raised arguments regarding this information which may be contained in Exhibit B or other responsive material. To the extent this information is included in Exhibit B, this information will be withheld in the event of a ruling requiring the City to release any portion of the responsive documents.

Section 552.130(c) provides that subject to Chapter 730 of the Transportation Code, a governmental body may redact information, without the necessity of requesting an Attorney General decision, if it relates to a driver's license, a personal identification document, or a motor vehicle title or registration issued by an agency of this state or another state or country. If the City redacts such information, it will notify the requestor as required by Section 552.130(e). The City, therefore, has not raised arguments regarding these types of information.

The requestor has been notified by copy of this letter that the City has chosen to seek an Attorney General decision on this matter. All responsive information to which the City is not claiming exception to disclosure will be provided to the requestor. Please contact me at the above address with any questions regarding this matter.

Sincerely,

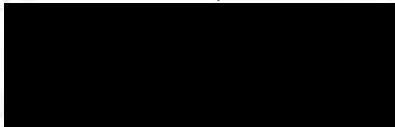


Alicia K. Kreh

AKK:jlw

Enclosures

cc: Christian Duke (w/o enclosures)





Christian [REDACTED] >

Public Information Request to the City of Boerne

Christian [REDACTED]
To: PIA TOASE <PIA@toase.com>

Fri, Apr 9, 2021 at 12:45 AM

Thank you for your assistance. I'm unclear as to the additional documentation that you have at hand as the Deputy never showed after waiting some time.

I placed a call for assistance from Cypress Grill's landline after the waitress had called using her cell phone the first time. Each time the Deputy never showed at the location. Finally I left after waiting quite a while. I'm not sure after taking a scan of the records that is actually what is reflected. Are there any additional records. I would like to have records of both calls placed on my behalf from Cypress grill.

Again, thank you very much for your assistance.

Christian Duke
[Quoted text hidden]



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 16, 2021

Ms. Alicia K. Kreh
Counsel for the City of Boerne
Taylor Olson Adkins Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2021-15964

Dear Ms. Kreh:

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# 888307.

The City of Boerne (the "city"), which you represent, received a request for information pertaining to a specified 9-1-1 call. You inform us the city will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and Open Records Decision 684 (2009).¹ You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 exception 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,

¹ 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. 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). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b). Open Records Decision No. 684¹ is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general opinion.

725 (Tex. Crim. App. 1928). The 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. 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 the remaining information reveals the identities of complainants who reported possible violations of state law and city ordinances that carry criminal penalties to the city's police department, which is authorized to enforce the laws and ordinances at issue. However, we note the requestor is the complainant in some of information the issue. Further, we find you have failed to demonstrate any of the remaining information consists of the identifying information of an individual who reported a criminal violation to the city for purposes of the informer's privilege. Accordingly, the city may not withhold the information you marked under section 552.101 on that basis.

Section 552.101 of the Government Code also 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 9-1-1 service supplier. See Open Records Decision No. 649 (1996). We note the City of Boerne is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. To the extent the submitted information contains the originating telephone number or address of a 9-1-1 caller furnished by a 9-1-1 service supplier, the city must withhold such information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. To the extent the submitted information does not contain the originating telephone number or address of a 9-1-1 caller provided by a 9-1-1 service supplier, the city may not withhold the information at issue on that ground.

In summary, to the extent the submitted information contains the originating telephone number or address of a 9-1-1 caller furnished by a 9-1-1 service supplier, the city 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 city 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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/jm

Ref: ID# 888307

Enc. Submitted documents

c: Requestor
(w/o enclosures)