



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 8, 1996

Ms. Sheree L. Rabe  
Assistant City Attorney  
City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627-0409

OR96-0153

Dear Ms. Rabe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35533.

The City of Georgetown (the "city") received an open records request for all police records pertaining to two related domestic disturbance calls handled by the city police department. You express concern that releasing any of the requested information "may comprise the integrity of the informer's privilege and the law enforcement privilege and may jeopardize the welfare of" the parties involved.

The "informer's privilege," as incorporated into section 552.101 of the Government Code, protects the identity of certain persons who report violations of the law; it does not, however, protect the identities of all such individuals. *See, e.g., Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (name of individual identified in police records as "complainant" is public information). *See also Heard v. Houston Post Co.*, 684 S.W.2d 210, 214 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.) (affirming decision in *Houston Chronicle* that identities of all "complainants" are public). You have not met your burden of establishing that the individuals whose identities you seek to protect are in fact "informants," as opposed to "complainants" whose identities are public information. *See also* Open Records Decision No. 482 (1987) at 3-4. The city therefore may not withhold the complainants' names under the informer's privilege.

When a governmental body claims the "law-enforcement" exception, section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement

or prosecution. Open Records Decision No. 434 (1986). Traditionally when applying section 552.108, our office has distinguished between cases that are still under active investigation and those that are closed. In cases that are still under active investigation, this section exempts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-466 (1982); Open Records Decision Nos. 444 (1986), 434 (1986).

In this instance, there were no criminal charges filed in connection with the police calls and you have not indicated that the police department is otherwise actively pursuing any investigation related to this matter. We conclude that you have made no cognizable argument for withhold the requested information under section 552.108.

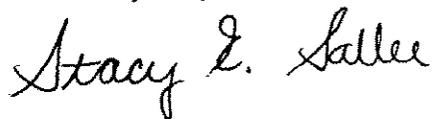
Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 (1982) at 1, we will raise section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Gov't Code § 552.352. After reviewing the information at issue, we conclude that portions of the requested documents come under the protection of the common-law right of privacy and thus must be withheld from the public pursuant to section 552.101 of the Government Code. *See Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. We have marked the portions of one "Incident Report" that the city must withhold from the public.<sup>1</sup> The remaining information must be released in its entirety.

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<sup>1</sup>We note that at least of the records at issue contain an individual's social security number. This office recently concluded in Open Records Decision No. 622 (1994) at 3 that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii)(I), make confidential any social security number obtained or maintained by any "authorized person" pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code. However, it is not apparent to us that the social security number contained in the records at issue here was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990. Therefore, we have no basis for concluding that the social security number at issue was obtained or is maintained pursuant to such a statute and therefore must be withheld from the public under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(vii)(I). Prior to releasing the social security number, you should ensure that the number was not obtained nor is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/RWP/ch

Ref: ID# 35533

Enclosures: Marked documents

cc: Ms. Melinda Luxemburg  
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Georgetown, Texas 78626  
(w/o enclosures)