



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 9, 1998

Mr. Mark Flowers
Assistant City Attorney
P. O. Box 1152
Midland, Texas 79702

OR98-1629

Dear Mr. Flowers :

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116682.

The City of Midland (the "city") received a request for information relating to two homicide cases. You state that the city is not in possession of a recording of any 911 calls made the night of Angela Frescas' murder in 1992, since the city maintains recordings of 911 calls for a period of one year. You also state that the city is not in possession of "any legal paperwork Angela may have filed against her killer before she was fatally attacked," or "other photographs taken of Stephanie before the final confrontation between her and her husband." You inform us that the city has released to the requestor some of the crime scene photographs pertaining to the Frescas case. You assert that the remaining photographs pertaining to the Frescas case, all of the photographs pertaining to the Richardson case and the recording of the 911 call in the Richardson case are excepted from required public disclosure based on sections 552.101 and 552.108 of the Government Code.

Section 552.108 of the Government Code reads in relevant part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

You argue that the release of the pictures would divulge investigative techniques of the Midland Police Department and thereby interfere with the detection, investigation or prosecution of crime. You have provided further detailed arguments explaining why each

set of photographs reveals investigative techniques. We conclude that the city may withhold the photographs from the requestor based on section 552.108(a)(1).¹

You assert that the recording of the 911 call pertaining to the Richardson case is excepted from disclosure based on section 552.101 in conjunction with the informer's privilege. Section 552.101 excepts from disclosure information that is considered to be confidential by law, either constitutional, statutory or by judicial decision. As interpreted by this office, section 552.101 incorporates the informer's privilege. The privilege protects the identity of a person who reports a violation or possible violation of the law to officials charged with the duty of enforcing the particular law. See Open Records Decision No. 515 (1988). The privilege does not apply if the subject of the information already knows the informer's identity. See Open Records Decision No. 208 (1978).

You argue that disclosure of the caller's voice would reveal the identity of the informant. We agree. Accordingly, assuming the subject of information does know the caller's identity, the city may withhold the recording from the requestor based on section 552.101 in conjunction with the informer's privilege. Cf. *id.* (applying privilege to content of informer's communication where it tends to reveal his identity.)

We are resolving this matter with this 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 may 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/mjc

Ref: ID# 116682

¹As the city also argues that section 552.108(a)(2) applies to the photographs pertaining to the Richardson case, we note that this office has determined that this exception applies when the governmental body establishes that the information relates to a criminal investigation or prosecution that concluded in a result other than conviction or deferred adjudication.

Enclosures: Submitted tape, photographs

cc: Ms. Laura Moore
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(w/o enclosures)