



September 23, 1999

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR99-2678

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128476.

The City of Mesquite (the “city”) received a request for information relating to an auto/pedestrian accident that occurred on May 20, 1999. The requestor seeks a copy of the 9-1-1 audio recording and the corresponding dispatcher’s log showing the caller’s name, address and telephone number. You contend that this information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the informer’s privilege and sections 771.061 and 772.318 of the Health and Safety Code. We have considered the exception you claim and reviewed the information at issue.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses information deemed confidential by statute. You ask whether sections 771.061 and 772.318 of the Health and Safety Code make confidential the telephone number and address of a 9-1-1 caller who furnishes that information to the city. Section 771.061(a) of the Health and Safety Code makes confidential certain information telephone companies and the United States Postal Service furnish a governmental entity that provides computerized 9-1-1 emergency services. Open Records Decision No. 661 (1999). Such information is also confidential when included in maps used by a governmental entity in the provision of emergency services. *Id.* Originating telephone numbers and addresses furnished on a call-by-call basis by a service supplier to a 9-1-1 emergency communication district established under subchapter D of chapter 772 of the Health and Safety Code are confidential under section 772.318 of the Health and Safety Code. Open Records Decision No. 649 (1996). Section 772.318 does not except from disclosure any other information contained on a computer aided dispatch report that was obtained during a 9-1-1 call. *Id.*

In this case, the 9-1-1 caller did not place his call from his own telephone. Therefore, the city did not ascertain the caller’s address and telephone number from information provided by a service supplier under chapter 771 of the Health and Safety Code or by a telephone company or the United States Postal under chapter 772 of the Health and Safety Code.

Instead, the caller voluntarily provided this information to the city. Under the circumstances, we conclude that the caller's address and telephone number are not excepted from disclosure under section 552.101 in conjunction with section 771.061 or section 772.318.

You also contend that the requested information is excepted from disclosure under section 552.101 in conjunction with the informer's privilege. The informer's privilege 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). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that 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 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 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). We agree that the 9-1-1 caller's identity is protected by the informer's privilege. In order to protect the caller's identity, the city may redact the caller's name, address, and telephone number from both the 9-1-1 audio recording and the dispatcher's log.¹ The remaining information in both the recording and the log must be released.

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.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

¹You state that "[r]elease of this information would appear to be in contravention to 'previous determinations' of [this] office" regarding the informer's privilege. We note, however, that the informer's privilege exists to protect the free flow of information to governmental bodies; it does not serve to protect third parties. Open Records Decision No. 549 at 5 (1990). Since it exists to protect this interest, a governmental body may waive the privilege and release information that would be protected by the privilege. *Id.* Thus, releasing the information at issue would not contravene "previous determination of [this] office."

Ref: ID# 128476

Encl. Submitted documents and tape

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(w/o enclosures)