



November 15, 1999

Ms. Lillian Guillen Graham  
Office of the City Attorney  
City Of Mesquite  
Box 850137  
Mesquite, Texas 75183-0137

OR99-3240

Dear Ms. Graham:

You have asked whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 129359.

The City of Mesquite (the "city") received a request for any and all information that pertains to police unit responses to a particular address since February 1995. You contend the requested records are excepted from required public disclosure by sections 552.101, 552.103, 552.108 and 552.130 of the Government Code. We have reviewed information you submitted and considered the exceptions you claim.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c), as amended by the Seventy-sixth Legislature,<sup>1</sup> reads as follows:

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<sup>1</sup>Act of May 26, 1999, 76th Leg., R.S., ch. 815, § 1, 1999 Tex. Sess. Law Serv. 3448 (Vernon) (to be codified as an amendment to Fam. Code § 58.007).

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The information at issue involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the requested information is confidential pursuant to section 58.007(c) of the Family Code. You must withhold the information from disclosure under section 552.101 of the Government Code. Section 51.02(2)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age. Here, some of the offense and incident reports you submitted that are responsive to the request are juvenile law enforcement records concerning juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. Therefore, these particular reports are confidential pursuant to section 58.007(c) of the Family Code. Accordingly, the city must withhold these reports from disclosure under section 552.101 of the Government Code.

In addition, you contend that the originating telephone numbers and addresses on a 911 report for this area are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. You claim that section 772.318 of the Health and Safety Code, one of several confidentiality provisions in chapter 772 of the Health and Safety Code, makes the originating telephone numbers and addresses confidential. As you raise this exception, we assume that the emergency 911 district involved here was established in accordance with chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 911 callers furnished by a service supplier. *See* Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication

districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. Health & Safety Code § 772.401, *et seq.* Thus, if the emergency communication district here is subject to section 772.118, 772.218 or 772.318, the originating telephone numbers and addresses on the Mesquite Police Department - Calls for Service report and the Incident Reports are excepted from public disclosure based on section 552.101 as information deemed confidential by statute.

As to your 552.103 claim on behalf of the city, neither the city nor the Mesquite Police Department have a litigation interest in these matters. Only the local District Attorney has the litigation interest and may claim that the information is excepted from disclosure under section 552.103.

Next, you contend that section 552.108(b)(2) excepts all of the requested information from disclosure. Section 552.108 of the Government Code excepts from disclosure (a) information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime and (b) internal records or notations of a law enforcement agency or prosecutor that are maintained for internal use in matters relating to law enforcement or prosecution. In an open criminal case, section 552.108 exempts from disclosure all information except that basic information normally 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." Open Records Decision No. 553 at 4 (1990) (and cases cited therein).

With regard to the documents you provided that appear to have been filed with the magistrate, they must be released to the requestor as documents filed with a court are generally considered public. *Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992).

You also raise the "informer's privilege" to withhold portions of the requested information. Section 552.101 incorporates the "informer's privilege," which has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of *violations of law to officers charged with enforcement of that law*. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public

interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

The “informer’s privilege” aspect of section 552.101 protects the identity of persons who report violations of the law. When information does not describe conduct that violates the law, the informer’s privilege does not apply. Open Records Decision Nos. 515 (1988), 191 (1978). Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285 (1981), 279 (1981); *see also* Open Records Decision No. 208 (1978). This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988), 391 (1983). The privilege does not, however, protect the contents of communications if they do not reveal the identity of the informant. *Roviaro v. United States*, 353 U.S. at 60. Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant’s identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (1978). A claim under the informer’s privilege is waivable by the governmental body since the privilege belongs to the government. *See* Open Records Decision No. 549 (1990) at 6. We conclude that the informer’s privilege is not a compelling exception and, therefore, may not be used to withhold any of the requested information from required public disclosure under section except for the information in incident report number 9071814.

You also contend that portions of the requested information are excepted from disclosure pursuant to section 552.130. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

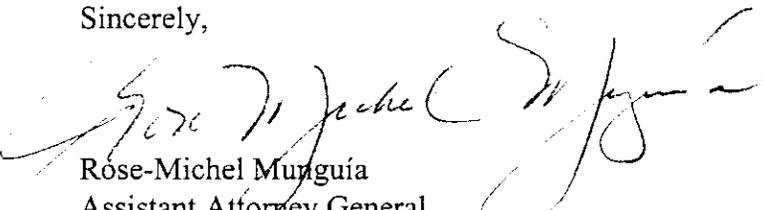
- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

We have marked the types of information you must withhold under section 552.130, including vehicle identification numbers, driver’s license numbers and license plate numbers. Once this information has been redacted, the remaining information must be released.

Finally, there are several social security numbers noted on some of the documents submitted. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. Section 552.101 excepts from disclosure information made confidential by statutes. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* There is no basis for concluding that the social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act. However, it should be noted that section 552.353 of the Public Information Act does impose criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, you should determine if such information was obtained or is maintained by the city in accordance with 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 any questions about this ruling, please contact our office.

Sincerely,



Rose-Michel Murguía  
Assistant Attorney General  
Open Records Division

RMM/ch

Ref: 129359

Encl. Submitted documents

cc: Mr. Perry Litton  
9519 Forest Lane, #1083  
Dallas, Texas 75213  
(w/o enclosures)