



July 12, 2002

Mr. Steven M. Kean
Senior Assistant City Attorney
City of Tyler - Legal Department
P.O. Box 2039
Tyler, Texas 75710

OR2002-3791

Dear Mr. Kean:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165980.

The Tyler Police Department (the "department") received a request for information regarding 911 calls and officer communications taking place during a specified period of time on two certain days and a copy of a videotape recording events for a specified period of time on the same two days. You state that you will release some responsive information to the requestor. You claim, however, that the remaining requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted representative sample of information.¹

You claim that portions of the submitted information may be excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.² Juvenile law enforcement records relating to conduct that occurred on or

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

² 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 protected by other statutes.

after September 1, 1997 are confidential under section 58.007. Section 58.007 states in pertinent part:

(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.

Fam. Code § 58.007(c). Based on our review of your representations and the information at issue, we find that no portion of the information concerns juvenile conduct that occurred after September 1, 1997. Accordingly, we conclude that the department may not withhold any portion of the information from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

You also claim that portions of the submitted information may be excepted from disclosure pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201 provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Based on our review of your representations and the information at issue, we find that no portion of the information concerns a report or investigation of

alleged or suspected abuse or neglect under chapter 261 of the Family Code. Accordingly, we conclude that the department may not withhold any portion of the information from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

However, you also claim that portions of the information at issue are excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108(a) provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if “release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov’t Code §§ 552.108(a), (b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the case concerning the requestor relates to a pending, ongoing criminal investigation. Thus, we find that the release of portions of the information at issue “would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a). Accordingly, we conclude that the department may withhold the submitted videotape and audiotape concerning the “Holt radio conversation” from disclosure in their entirety pursuant to section 552.108(a)(1). However, we note that the audiotape entitled “Test for Steven Kean” does not contain any references to the case associated with the requestor. Thus, we find that you have not sufficiently demonstrated how and why the release of any portion of that audiotape would interfere with law enforcement or prosecution. Accordingly, we conclude that the department may not withhold any portion of the audiotape entitled “Test for Steven Kean” from disclosure under section 552.108(a)(1) of the Government Code.

However, you also claim that portions of this particular audiotape are excepted from disclosure pursuant to section 552.101 in conjunction with chapter 772 of the Health and Safety Code. We assume that the emergency 911 district involved here was established in accordance with chapter 772, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218 and 772.318 make the originating telephone numbers and addresses of 911 callers furnished by a service supplier confidential. *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. *See* 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 of the Health and Safety Code, we

conclude that the department must withhold from disclosure any originating telephone numbers and addresses of 911 callers furnished by a service supplier that may be contained on this audiotape pursuant to section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code.

You also claim that portions of this particular audiotape are excepted from disclosure pursuant to section 552.101 in conjunction with the common-law informer's privilege. The common-law informer's privilege has long been recognized by Texas courts and is incorporated into the Public Information Act by section 552.101. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *see also Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's 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 that the subject of the information does not already know the informer's identity. *See* Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege also 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." *See* Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute carrying a civil or criminal penalty. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). Based on our review of your representations, we find that you have failed to identify any alleged violation of law that may have been reported to the department by individuals that may be identified on this particular audiotape. Furthermore, it is not apparent from our review of this audiotape what particular provisions of law may have been allegedly violated and whether such a violation carries a civil or criminal penalty. Accordingly, we conclude that the department may not withhold any portion of this audiotape from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

However, you also claim that portions of this particular audiotape are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that the department must withhold all Texas license plate numbers and Texas driver's license numbers identified on this audiotape from disclosure pursuant to section 552.130 of the Government Code.

In summary, the department may withhold the submitted videotape and audiotape concerning the "Holt radio conversation" from disclosure in their entirety pursuant to section 552.108(a)(1) of the Government Code. The department must withhold from disclosure any originating telephone numbers and addresses of 911 callers furnished by a service supplier that may be contained on the audiotape entitled "Test for Steven Kean"

pursuant to section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code, if the emergency communication district here is subject to section 772.118, 772.218 or 772.318 of the Health and Safety Code. The department must withhold from disclosure all Texas license plate numbers and Texas driver's license numbers contained on that same audiotape pursuant to section 552.130 of the Government Code. The department must release the remaining portions of this particular audiotape to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

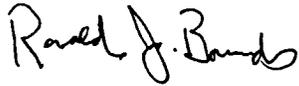
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 165980

Enc. Submitted videotape and audiotapes

cc: Mr. Erick Platten
3301 Golden Road, Suite 410
Tyler, Texas 75701
(w/o enclosures)