



November 12, 2002

Mr. G. Chadwick Weaver  
First Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2002-6399

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172001.

The City of Midland (the "city") received a request for records from the city's Animal Control and a request for records from the city's Health Department regarding calls made by those departments to the requestor's residence over the past seventeen years. You state that you have released a redacted copy of the information responsive to the Animal Control portion of the request. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts information considered to be confidential by judicial decision. The informer's privilege, incorporated into the Act by section 552.101, 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)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). In addition, the informer's privilege protects the content of the communication only to the extent that it identifies the informant. See *Roviaro v. United States*, 353 U.S. 53, 60 (1957).

You explain that exhibit C contains information revealing the identity of persons who reported possible violations of city ordinances 6-2-11, 6-2-12, 8-6-18, which relate to standards concerning the keeping of animals and to prohibited accumulations of stagnant water, filth, and weeds, etc. You also show that violations of these ordinances can carry a fine of \$2000.00. Accordingly, we find that you have established the applicability of the informer's privilege to exhibit C. Therefore, you may withhold the information identifying informants in exhibit C, which we have marked, pursuant to section 552.101.

Section 552.101 also incorporates confidentiality statutes such as section 81.046 of the Health and Safety Code. Under section 81.042, various types of health professionals are required to make reports to the "local health authority" of instances of suspected cases of "reportable diseases" and "health conditions." Section 81.046 of the Health and Safety Code provides:

(a) Reports, records, and information furnished to a health authority . . . that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under [the Public Information Act] and may not be released or made public on subpoena or otherwise except as provided by Subsections (c) and (d).

Health & Safety Code § 81.046(a), (b). In Open Records Decision No. 577 (1990), this office concluded that any information acquired or created during an investigation under chapter 81 is confidential and may not be released unless an exception set out in the statute applies. You assert that exhibit D consists of information acquired during an investigation conducted pursuant to chapter 81. Upon review, we agree that section 81.046 applies to the information contained in exhibit D, and we find that none of the exceptions in section 81.046 applies. Accordingly, you must withhold exhibit D in its entirety.

In summary, you may withhold the information we have marked in exhibit C pursuant to section 552.101. You must withhold exhibit D in its entirety pursuant to section 552.101. You must release the remaining information.

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,

A handwritten signature in black ink, appearing to read "Maverick F. Fisher". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping underline.

Maverick F. Fisher  
Assistant Attorney General  
Open Records Division

MFF/seg

Ref: ID# 172001

Enc: Submitted documents

c: Mr. Rafeek Mohamed  
5202 Rio Grande Avenue  
Midland, Texas 79707  
(w/o enclosures)