



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

March 6, 2003

Mr. Lawrence G. Provins  
Assistant City Attorney  
City of Pearland  
3519 Liberty Drive  
Pearland, Texas 77581

OR2003-1475

Dear Mr. Provins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177515.

The City of Pearland (the "city") received a request for all 9-1-1 calls within a specified area from April 25, 2002 to May 3, 2002. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have received and considered comments from the requestor. *See* Gov't Code § 552.304. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. To the extent that the submitted information contains addresses and phone numbers that were provided to a 9-1-1 service by a service supplier and the 9-1-1 service is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code, the originating phone numbers and addresses of the 9-1-1 callers must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by statute. However, if the phone

numbers and addresses were not provided to the 9-1-1 service by a service supplier, or if the 9-1-1 service is not subject to section 772.118, 772.218, or 772.318, the addresses and phone numbers must be released.

You also assert that the identities of the 9-1-1 callers are excepted from disclosure by section 552.101 in conjunction with the informer's privilege. The informer's privilege, incorporated into the Public Information Act by section 552.101, protects the identity of persons who report violations of the law to officials having the duty of enforcing particular laws. *See Roviato v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege does not, however, apply to information that does not describe alleged illegal conduct. Open Records Decision No. 515 at 5 (1988). For example, the informer's privilege aspect of section 552.101 does not protect memoranda and written statements complaining of a fellow employee's work performance when those statements do not reveal a suspected violation of specific laws to the officials charged with enforcing those laws. *See* Open Records Decision Nos. 579 at 8 (1990), 515 at 3 (1988).

In this instance, you do not point to any specific report of violation of law, nor does the information itself reflect which 9-1-1 calls, if any, were made for the purpose of reporting violations of law. We conclude, therefore, that the city has not met its burden under the informer's privilege. You must release the requested information with the exception of information that may be confidential under chapter 772 of the Health and Safety Code.

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 Dep't of Pub. 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,



Jennifer E. Berry  
Assistant Attorney General  
Open Records Division

JEB/sdk

Ref: ID# 177515

Enc: Submitted documents

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