



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

March 19, 2003

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

OR2003-1877

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# 178099.

The City of Pearland (the "city") received a request for the audiotape of 9-1-1 calls, the "voice copy," and certain written reports, if any, in relation to a specified case. You claim that the requested audiotape is excepted from disclosure under section 552.101 of the Government Code. We note that your request for a decision does not address the portion of the request seeking written reports from police officers or witnesses. We assume that the city has released this information to the extent that it exists. If it has not, it must do so at this time. *See* Gov't Code §§ 552.021, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances). We have considered the exception you claim and have reviewed the submitted information.

You claim that the requested information is excepted from disclosure under section 552.101 in conjunction with the informer's privilege. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You assert that the submitted audiotape should be withheld to protect the identity of an informer who called 9-1-1 to report a vehicular accident. However, you do not specify what laws were allegedly violated in relation to the accident, nor does the audiotape reflect this information. Neither do you state that any alleged violations are subject to criminal or civil penalties. We therefore conclude that the city may not withhold any of the submitted information pursuant to section 552.101 of the Government Code and the informer's privilege.

Section 552.101 also encompasses information that another statute makes confidential. 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 are applicable only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 at 1-3 (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 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.

The city claims that a portion of the submitted information is confidential under section 772.318. However, you have not demonstrated that any telephone numbers or addresses were obtained from a 9-1-1 service supplier. *See* Open Records Decision No. 649 at 2 (only originating telephone numbers and addresses gained by 9-1-1 district's use of service supplier's computerized database are made confidential). Thus, the city has not shown that any of the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. Therefore, the city must release the requested information in its entirety.

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,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/lmt

Ref: ID# 178099

Enc. Submitted documents

c: Mr. Darrell Woods  
6501 Grace  
Pearland, Texas 77584  
(w/o enclosures)