



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2006

Mr. Trenton C. Nichols
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2006-08163

Dear Mr. Nichols:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 255210.

The McKinney Police Department (the "department") received a request for a specific offense report and related call notes, the call notes for a specific address during a certain time period, and the "civil stand-by" for the same address where an officer assisted in serving divorce papers. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted any information regarding the "civil stand-by" where an officer assisted in serving divorce papers for our review. As you have not submitted this information for our review, we assume you have released it to the extent that it existed at the time this request was received. If you have not released any such records, you must release them to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established

in accordance with chapter 772, and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. See Open Records Decision No. 649 (1996). We understand the City of McKinney to be part of an emergency communication district that was established under section 772.318.¹ Therefore, to the extent the originating telephone numbers and addresses of the 9-1-1 callers in Exhibit B1 were furnished by a 9-1-1 service supplier, they must be withheld under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. To the extent the telephone numbers and addresses of the 9-1-1 callers in Exhibit B1 were not furnished by a 9-1-1 service supplier, they may not be withheld under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.

You claim that Exhibit B2 may be withheld under section 552.108 of the Government Code, which excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibit B2 relates to a pending criminal investigation. Based on this representation, we conclude that the release of Exhibit B2 would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ’g 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) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *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). The complainant’s identification is considered basic information not excepted from disclosure by section 552.108. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). However, you argue that the complainant’s identity may be withheld from the basic information to be released and the submitted 9-1-1 call records under the common law informer’s privilege.

Section 552.101 also encompasses the informer’s privilege. Texas courts have long recognized the informer’s privilege. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer’s privilege protects from disclosure the identities of persons who report activities over which a governmental body has criminal or quasi-criminal law-

¹Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

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). In this instance, the submitted documents reveal that the suspect knows the informer's identity. Therefore, the informer's identity may not be withheld from any of the submitted information on the basis of the informer's privilege.

We note, however, that Exhibit B1 contains a Texas license plate number. Section 552.130 of the Government Code 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." Gov't Code § 552.130. Therefore, the department must withhold the Texas license plate number we have marked.

In summary, the department must withhold under section 552.101 in conjunction with section 772.318 of the Health and Safety Code only the originating telephone numbers and addresses of the 9-1-1 callers in Exhibit B1 that were furnished by a 9-1-1 service supplier. Under section 552.130, the department must also withhold the Texas license plate number we have marked in Exhibit B1. The remaining information in Exhibit B1 must be released. With the exception of basic information, the department may withhold Exhibit B2 under section 552.108(a)(1).

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 255210

Enc. Submitted documents

c: Mr. Scott W. Haynes
2025 Lakepointe Drive #180
Lewisville, Texas 75057
(w/o enclosures)