



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 19, 2006

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

OR2006-10835

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# 259747.

The City of McKinney (the "city"), which you represent, received a request for calls for service to a specified address for the past five years. You state that some of the requested information has been released to the requestor. You claim that some of the submitted 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 from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code are applicable to emergency 911 districts established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 911 callers that are furnished by a service supplier confidential. *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.

You seek to withhold the telephone numbers of 911 callers. You do not inform us, however, whether the city is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. Likewise, you do not inform us whether the telephone numbers in question were furnished by a 911 service supplier. Nevertheless, if the city is part of an emergency communication district established under sections 772.118, 772.218, or 772.318, and if the telephone numbers in question were furnished by a 911 service supplier, then the city must withhold the information in question under section 552.101 of the Government Code. But if the city is not part of an emergency communication district under sections 772.118, 772.218, or 772.318, or if the information in question was not furnished by a 911 service supplier, then the city may not withhold the telephone numbers under section 552.101.

You also raise section 552.101 in conjunction with the common-law 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 privilege protects 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 (1998), 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." *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. *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 the informer's identity. *See Open Records Decision No. 549 at 5 (1990)*.

You state that the remaining highlighted information identifies individuals who reported alleged violations of criminal laws. We have marked the identifying information of individuals who have reported alleged violations of criminal laws which may be withheld under section 552.101 on the basis of the informer's privilege. You do not indicate, however, whether the remaining alleged violations could result in the imposition of a civil or criminal penalty. We therefore conclude that you have not demonstrated that the remaining individuals' identities are protected by the common-law informer's privilege, and the city may not withhold this information on that basis under section 552.101 of the Government Code.

In summary, if the city is part of an emergency communication district established under sections 772.118, 772.218, or 772.318 of the Health and Safety Code, and if the telephone numbers that you seek to withhold were furnished by a 911 service supplier, then the city must withhold that information under section 552.101 of the Government Code. But if the city is not part of an emergency communication district under sections 772.118, 772.218,

or 772.318, or if the information in question was not furnished by a 911 service supplier, then the city may not withhold the telephone numbers under section 552.101. The city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. The rest of the submitted information must be released.

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).

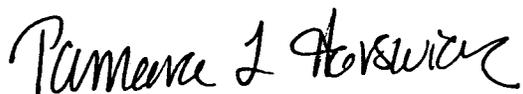
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink that reads "Tamara L. Harswick". The signature is written in a cursive, flowing style.

Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/krl

Ref: ID# 259747

Enc. Submitted documents

c: Mr. Paul D. Key  
Law Office of Paul D. Key  
117 S. Tennessee Street  
McKinney, Texas 75069  
(w/o enclosures)