Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 8, 1997

Mr. John Steiner
Division Chief
City of Austin
Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR97-1063

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 105471.

The City of Austin (the "city") received a request for "[c]omplete records of all phone calls that came to 911 operators in the 911 Operations Center at police headquarters for the period of Jan. 1, 1996 to Dec. 31, 1996." You assert that the requested information is excepted from required public disclosure based on Government Code sections 552.101, 552.108, and 552.110. You have submitted to this office a representative sample of the requested information.[1] Southwestern Bell Telephone Company ("Southwestern Bell") also asserts that the requested information is excepted from public disclosure based on section 552.110 of the Government Code and raises paragraph 2.9 of the Universal Emergency Number Service (911) tariff.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996).

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[1]In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted).This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Information normally found on the front page of an offense report is generally considered public. *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); Open Records Decision No. 127 (1976). The submitted information is substantially the same as the front page offense report information held to be public in *Houston Chronicle.* Therefore, the city may not generally withhold the requested information from the public pursuant to section 552.108 of the Government Code. *See* Open Records Decision No. 649 (1996) at 3. However, in appropriate circumstances--which have not been shown to exist here--the identity of a complainant or informant may be withheld from public disclosure based on Government Code section 552.101 or section 552.108. *See id.* at 3 n 4.

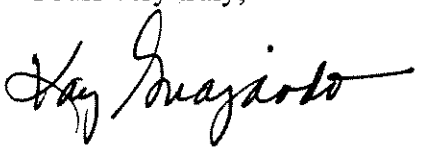
We turn to Southwestern Bell's arguments. Southwestern Bell raises section 552.110 of the Government Code, which excepts from disclosure two categories of information: (1) "[a] trade secret" and (2) "commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." In applying the "commercial or financial information" branch of section 552.110, this office now follows the test for applying the correlative exemption in the Freedom of Information Act, 5 U.S.C. § 552(b)(4). *See* Open Records Decision No. 639 (1996). That test states that commercial or financial information is confidential if disclosure of the information is likely either (1) to impair the government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. *See National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). A business enterprise cannot succeed in a *National Parks* claim by mere conclusory assertion of a possibility of commercial harm. "To prove substantial competitive harm, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure." Open Records Decision No. 639 (1996) (citing *Sharyland Water Supply Corp. v. Block*, 755 F.2d 397, 399 (5th Cir.), *cert.denied*, 471 U.S. 1137 (1985).

Southwestern Bell raises the concern that "[r]elease of 911 records may have a chilling effect on the public's use of 911 to freely call for necessary and needed emergency assistance for themselves or, especially, for others." Although we believe such a concern is valid, we do not believe Southwestern Bell has established that the requested information is confidential commercial or financial information. Further, as Southwestern Bell has failed to explain why the information is a trade secret, we conclude that the city may not withhold the requested information from the public based on section 552.110 of the Government Code. *Hyde Corp. v. Huffiness*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990).

Section 552.101 of the Government Code excepts from required public disclosure information that is deemed confidential by law. We have reviewed paragraph 2.9 of the Universal Emergency Number Service (911) tariff. Southwestern Bell has failed to establish how this information makes the requested information confidential by law. Accordingly, the city may not withhold the requested information from the requestor based on section 552.101 of the Government Code.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 105471

Enclosure: Submitted document

cc: Mr. Bob Banta
Reporter
Austin American Statesman
P.O. Box 670
Austin, Texas 78767
(w/o enclosure)