



May 21, 1999

Ms. Monica L. Strickland
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR99-1411

Dear Ms. Strickland:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 124411.

The City of Midland (the "city") received a request for a specific internal affairs investigation and dispatch tape. You have submitted a copy of the investigation file, the dispatch tape and a transcript of the dispatch tape for our review. You claim that portions of the investigative file are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You also claim that the dispatch tape and transcript are excepted in their entirety under the informer's privilege. We have considered the exceptions you claim and have reviewed the submitted information.

First, we address your contention that the identities of the complainant and witnesses are excepted from disclosure under section 552.108. Section 552.108 provides in part:

(b) An 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 is excepted from the requirements of Section 552.021 if:

- (1) release of the internal record or notation would interfere with law enforcement or prosecution;
- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108. We note, however, that where no criminal investigation or prosecution results from a police department's internal investigation of a police officer for alleged misconduct, section 552.108 is inapplicable to the internal investigation documents. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied); Open Records Decision No. 350 (1982).

Here, the police department's internal investigation did not result in a criminal investigation or prosecution. Therefore, we conclude that the identifying information may not be withheld from disclosure under section 552.108.

You also assert that some of the requested information may be withheld under the informer's privilege. The informer's privilege, incorporated into the Open Records Act by section 552.101,¹ 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). We note that 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). After reviewing your arguments and the submitted documents, we conclude that the informer's privilege is not applicable in this instance. *See, e.g.*, Open Records Decision Nos. 542 (1990) (concluding that Open Records Act places on a governmental body the burden of establishing why and how an exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). Thus, the city may not withhold the identifying information under the informer's privilege.

We note, however, that some of the submitted information is confidential by law. Federal regulations prohibit the release of criminal history information ("CHRI") maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). We have marked the information in the transcript that must not be released to the requestor. You must also redact the corresponding information from the dispatch tape.

We also note that the Seventy-Fifth Legislature added section 552.130 to the Open Records Act which governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

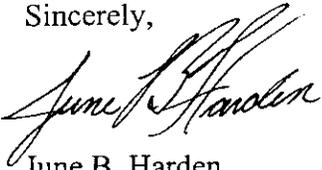
¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Thus, you must withhold the submitted driver's license number pursuant to section 552.130.

We are resolving this matter with an 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 should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "June B. Harden".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 124411

encl. Marked documents