



August 3, 1999

Mr. Mark A. Flowers
Assistant City Attorney
The City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR99-2190

Dear Mr. Flowers:

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# 126581.

The City of Midland (the "city") received a request for copies of "police calls or reports" pertaining to two particular addresses. You have identified the responsive offense reports and call reports, and you have already provided the requestor with basic information from the offense reports in accordance with section 552.108(c) of the Government Code. You claim that the remaining portions of the responsive documents are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the documents at issue.

First, you claim that the highlighted portions of exhibit B, a collection of offense reports, are excepted from disclosure under section 552.108(a)(2). Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." You state that the investigations documented in exhibit B did not result in conviction or deferred adjudication. Based upon this representation, we conclude that the highlighted portions of exhibit B are excepted from disclosure under section 552.108(a)(2). Although section 552.108(a)(2) authorizes you to withhold the highlighted information from disclosure, you may choose to release all or part of the information that is not otherwise confidential by law. *See Gov't Code § 552.007.*

Next, you contend that the highlighted information in exhibit C, a collection of call reports, is excepted from disclosure under section 552.101 in conjunction with the informer's privilege. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the informer's privilege. The informer's privilege has long been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). 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)).

Having reviewed the call reports in exhibit C, we find that the informer's privilege does not apply to the highlighted information in these documents. In two cases, the callers did not report violations of law. The other callers are complainants, and their identities are generally considered to be public information. See generally Gov't Code § 552.108(c); *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). Basic information about a crime, such as the complainant's identity, can only be withheld in special circumstances. See e.g., Open Records Decision Nos. 366 (1983), 333 (1982). You have not shown special circumstances sufficient to overcome the presumption of public access to basic information about a reported crime. Thus, you may not withhold the highlighted information in exhibit C from disclosure under the informer's privilege.

We, note, however, that some of the information in exhibit C may be excepted from disclosure under section 552.101 in conjunction with provisions of the Health and Safety Code. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 911 callers furnished by a service supplier. See Open Records Decision No. 649 (1996). 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. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. Health & Safety Code § 772.401, et seq. Thus, if the emergency communication district here is subject to section 772.118, 772.218 or 772.318, the originating telephone

numbers and addresses on the 911 report are excepted from public disclosure based on section 552.101 as information deemed confidential by statute.

Finally, you claim that the social security numbers contained in the submitted documents are confidential. Social security number are excepted from required public disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, § 42 U.S.C. § 405(c)(2)(C)(viii)(I), if they are obtained maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Thus, if the city obtained or maintains the social security numbers pursuant to a provision of law enacted on or after October 1, 1990, the city must withhold the social security numbers from disclosure under section 552.101.

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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 126581

Encl. Submitted documents

cc: Ms. Robbie Bennett
c/o Leslie Parks
7706 Tisdale
Austin, Texas 78757
(w/o enclosures)