



October 22, 1999

Ms. Lillian Guillen Graham  
Office of the City Attorney  
City Of Mesquite  
Box 850137  
Mesquite, Texas 75183-0137

OR-2985

Dear Ms. Graham:

You have asked whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 129324.

The City of Mesquite (the "city") received a request for "all calls for public service including -911- calls and any related offense reports from January 1996 to present" for a named individual and two specified addresses. You contend the requested records are excepted from required public disclosure by sections 552.101, 552.103 and 552.108 of the Government Code. We have reviewed the information you submitted and considered the exceptions you claim.

You contend that the originating telephone numbers and addresses on a 911 report for this area are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. This section encompasses information protected by other statutes. As you raise this exception, we assume that the emergency 911 district involved here was established in accordance with chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. 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 Mesquite Police Department - Calls for Service Reports are excepted from public disclosure based on section 552.101 as information deemed confidential by statute.

Section 552.101 also protects information protected by the common-law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). To the extent the requestor is asking for any unspecified records in which the named individual is identified as a "suspect," the requestor, in essence, is asking that the city compile that individual's criminal history. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See Open Records Decision Nos. 616 (1993), 565 (1990)*. Thus, to the extent the named individual is identified as the "suspect," the city must withhold the information as a compilation of the referenced individual's criminal history pursuant to section 552.101. We have marked the information that you must withhold.

As to your section 552.108(a)(2) claim, this section excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Based on the information you provided, we understand you to assert that the requested information pertains to cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

However, section 552.108 is not applicable to basic front page information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such 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). Thus, with the exception of the basic front page information which you indicate that you have already released, you may withhold the requested information from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. <sup>1</sup>

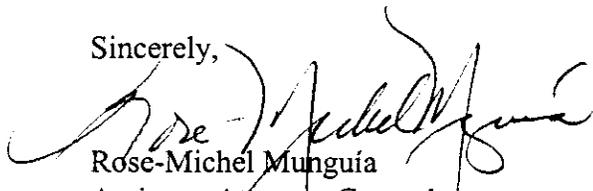
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<sup>1</sup>Basic, front page type information may not be withheld from disclosure under either section 552.108 or section 552.103. Open Records Decision No. 597 at 3 (1991).

You claim that some of the basic information, which you have highlighted, should not be released pursuant to the informer's privilege under section 552.101. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); Open Records Decision Nos. 582 (1990), 515 (1988). The informer's privilege does not categorically protect from release the identification and description of a complainant, which is front page offense report information generally considered public by *Houston Chronicle*. *See Gov't Code § 552.108(c); Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 187 (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 identity of a complainant, whether an "informant" or not, may only be withheld upon a showing that special circumstances exist. *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 the complainant's identity. Thus, you may not withhold the highlighted information from disclosure under the informer's privilege.

As sections 552.101 and 552.108 are dispositive, we will not address your 552.103 claim. 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,



Rose-Michel Munguia  
Assistant Attorney General  
Open Records Division

RMM\nc

Ref: ID# 129324

Encl: Submitted documents

cc: Mr. Tom Strawther  
1405 Woodmont  
Rowlet, Texas 75089  
(w/o enclosures)