



May 26, 2000

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

OR2000-2090

Dear Mr. Flowers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135634.

The City of Midland (the "city") received a request for all tapes and logs of 911 calls, all the Midland Police Department's dispatches for ambulance and fire trucks, and all services made by ambulance and fire trucks for the Midland Police Department, that occurred on February 11, 2000 between the hours of 6:00 p.m. and 1:00 a.m. You claim that the requested information, submitted as Exhibits B and C, 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. Accordingly, section 552.101 encompasses confidentiality provisions such as those found in chapter 722 of the Health and Safety Code. You assert that the highlighted portions of Exhibit B and portions of Exhibit C, that reveal the originating telephone numbers and addresses provided to a 9-1-1 service by a telephone service provider, are confidential under section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code, 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 772.318 applies to emergency communication districts for counties with a population over 20,000. Thus, if the emergency communication

district here is subject to section 772.318 as you claim, the originating telephone numbers and addresses, as highlighted in Exhibit B and recorded in portions of Exhibit C are confidential pursuant to section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Therefore, assuming the city is subject to section 772.318, the city must withhold the highlighted portions of Exhibit B, and release the remainder of Exhibit B to the requestor. The city must also withhold the recorded portions of Exhibit C that reveal the originating telephone numbers and addresses. Because you argue that only portions of Exhibit C should be withheld, we assume the city is able to redact portions of the tape recording and release the other portions. If the city is unable to redact the confidential portions of Exhibit C then it may withhold the entire tape.

You also raise the “informer’s privilege” to withhold portions of Exhibit C. Section 552.101 incorporates the “informer’s privilege,” which has been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer’s privilege:

What is usually referred to as the informer’s privilege is in reality the Government’s privilege to withhold from disclosure the identity of persons who furnish information of *violations of law to officers charged with enforcement of that law*. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

The “informer’s privilege” aspect of section 552.101 protects the identity of persons who report violations of the law. When information does not describe conduct that violates the law, the informer’s privilege does not apply. Open Records Decision Nos. 515 (1988), 191 (1978). Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285 (1981), 279 (1981); *see also* Open Records Decision No. 208 (1978). This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988), 391 (1983). The privilege does not, however, protect the contents of communications if they do not reveal the identity of the informant. *Roviaro v. United States*, 353 U.S. at 60. Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant’s identity is known to the individual who is the subject of the complaint. See Open Records Decision No. 208 (1978). In reviewing Exhibit C, we find that portions of Exhibit C contain calls reporting violations of the law, wherein the identities of the callers

are revealed and apparently unknown to the subjects of the complaints. In regards to these types of call, information identifying the callers must be withheld under the informer's privilege of section 552.101 of the Government Code. However, many of the calls recorded on Exhibit C do not report a violation of the law or do not identify the caller. The city must release the recording of these calls. As stated above, assuming the city has the capability to redact portions of the tape recording, the portions of Exhibit C, as described above, must be redacted prior to the release of the remainder of Exhibit C. Otherwise, the city may withhold the entire tape recording.

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.

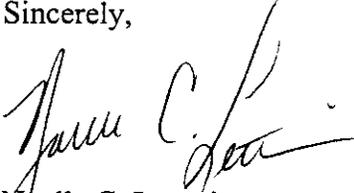
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

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, appearing to read "Noelle C. Letteri". The signature is fluid and cursive, with a prominent initial "N" and "C".

Noelle C. Letteri  
Assistant Attorney General  
Open Records Division

ncl/nc

Ref: ID# 135634

Encl. Submitted documents

cc: Mr. Steve Brannan  
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(w/o enclosures)