



August 1, 2000

Mr. Mark A. Flowers
Assistant City Attorney
City of Midland
300 North Loraine, Room 320
P.O. Box 1152
Midland, Texas 79702-1152

OR2000-2906

Dear Mr. Flowers:

You ask 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# 138528.

The City of Midland (the "city") received a request for information regarding all service calls made to a specific address within the last six years. You claim that a portion of the requested information is excepted from disclosure pursuant to the informer's privilege and Health and Safety Code section 772.318. You have submitted the responsive call sheets for our review. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). The submitted information includes a document that is excepted under section 552.101 in conjunction with Texas Family Code section 261.201. Section 261.201 provides as follows:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this Code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report

We have marked the document which must be withheld, in its entirety, pursuant to section 261.201.

We now address the applicability of your claimed exceptions to the remaining information. Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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. *See 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)). 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)*. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. *See Open Records Decision No. 549 at 5 (1990)*.

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)*. These provisions may apply to an emergency 911 district that was established in accordance with chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts.

In the instant case, the remaining documents do not contain information which would reveal the identity of the caller, nor do the documents reveal the addresses or telephone numbers of the callers. As a result, the informer's privilege and Health and Safety Code section 772.318 are not applicable. Therefore, you must release the remaining information.

In summary, the document we have marked must be withheld, in its entirety, pursuant to Family Code section 261.201. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and 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,



Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 138528

Encl. Submitted documents

cc: Mr. Rick Lopez
P.O. Box 1650
Midland, Texas 79702
(w/o enclosures)