



October 24, 2000

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

OR2000-4141

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 # 140494.

The City of Midland (the "city") received a request for information relating to a specified residence address, including records of police visits to that address and of the purposes of such visits. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Thus, section 552.101 protects information that is deemed to be confidential under other statutes, such as sections 772.118, 772.218, and 772.318 of the Health and Safety Code. These statutes make confidential the originating telephone numbers and addresses of 911 callers furnished by a service supplier. See Open Records Decision No. 649 (1996). Sections 772.118, 772.218, and 772.318 apply only to an emergency 911 district established in accordance with chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. *Id.* Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You claim that the requested records contain telephone numbers and related addresses that are confidential

under section 772.318 of the Health and Safety Code. Assuming that the city is included in an emergency communication district that is subject to section 772.318, the originating telephone numbers and addresses of 911 callers are confidential and must be withheld from disclosure under section 552.101 of the Government Code.

You also raise section 552.101 in conjunction with the common law informer's privilege. Texas courts have recognized the common law "informer's privilege." *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53 (1957), the United States Supreme Court explained the rationale of the informer's privilege as follows:

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.]

Id. at 59. The "informer's privilege" aspect of section 552.101 protects the identity of an individual who reports a violation of the law. When information does not describe conduct that violates the law, the informer's privilege does not apply. *See* Open Records Decision Nos. 515 (1988), 191 (1978). The privilege does not protect the contents of communications that do not reveal the identity of the informant. *Roviaro v. United States*, 353 U.S. at 60. Furthermore, because part of the purpose of the informer's 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 this instance, you state that the city seeks to withhold "the names, phone numbers, addresses and the substance of comments of persons who gave information about the commission of crime to officers charged with the duty of enforcing the related laws." You assert that "[a]ny of this information could reveal the identity of an informer." Upon careful review of the information that you seek to withhold under section 552.101 in conjunction with the informer's privilege, we conclude that a portion of that information is excepted from disclosure. We have marked the information that the city may withhold.

Lastly, we address your claim under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

- (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;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). Assuming that the information that we have marked is a Texas license plate number, the city must withhold that information in accordance with section 552.130.

In summary, the originating telephone numbers and addresses of 911 callers are confidential under section 552.101 of the Government Code if the city is part of an emergency communication district governed by section 772.318 of the Health and Safety Code. Information that would identify individuals who reported criminal conduct to the police is excepted from disclosure under section 552.101 in conjunction with the common law informer's privilege. Motor vehicle record information must be withheld in accordance with section 552.130. The rest of the submitted information must be released.

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

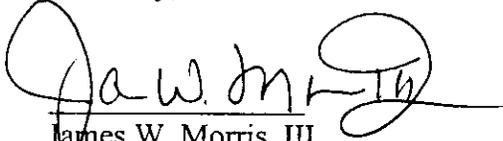
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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 "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/seg

Ref: ID# 140494

Encl. Submitted documents

cc: Mr. Larry L. Wells
3107 Point O'Woods
Austin, Texas 78735
(w/o enclosures)