



October 22, 2001

Ms. Elaine S. Hengen  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2001-4786

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153682.

The El Paso Police Department (the "department") received a written request for "[a]ll dispatch communications and records between the dispatcher and law enforcement agents who were called to 10961 Gary Player, El Paso, Texas on the late hours of June 23, 2001, through the early hours of June 24, 2001, in connection with a raid." You state that the department has released a redacted copy of the computer-aided dispatch ("CAD") report to the requestor. You contend that the redacted information is made confidential under chapter 772 of the Health and Safety Code, and thus must be withheld from the public pursuant to section 552.101 of the Government Code. Additionally, you contend that the tape recording of the 911 call reporting the incident and the subsequent communications between the police dispatcher and law enforcement officers is excepted from disclosure under section 552.108 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 772.318(c) of Health and Safety Code makes confidential originating telephone numbers and addresses furnished on a call-by-call basis by a service supplier to a 9-1-1 emergency communication district established under subchapter D of chapter 722 of the Health and Safety Code.<sup>1</sup> See Open

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<sup>1</sup>Subchapter D applies to 9-1-1 districts for counties with a population over 20,000.

Records Decision No. 649 (1996). Based on your representation that the 9-1-1 communication district that serves the department in fact was established under subchapter D of chapter 722, we agree that the department must withhold the information you highlighted in the CAD report pursuant to section 772.318(c) of the Health and Safety Code.

Section 552.108(a)(1) of the Government Code exempts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because the release of such information presumptively would interfere with the detection, investigation, or prosecution of crime. See *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). You state that the tape recording of the 911 call and the subsequent communications between the police dispatcher and law enforcement officers pertains to several pending criminal investigation and prosecutions. We therefore conclude that the department may withhold the tape recording in its entirety pursuant to section 552.108(a)(1) of the Government Code.

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 Hadassah Schloss at 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,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/RWP/seg

Ref: ID# 153682

Enc. Submitted documents  
Audio tape

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(w/o enclosures)