



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

August 8, 2003

Mr. G. Chadwick Weaver
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2003-5545

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185599.

The City of Midland (the "city") received a request for a copy of a specified police report and the name of the individual who called the police to the requestor's residence on a certain date. You state that you have released portions of the requested information. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You argue that Exhibit B is excepted by section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we understand you to assert that Exhibit B pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to Exhibit B.

However, section 552.108 is inapplicable to basic 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 offense and arrest information, you may withhold Exhibit B 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 in Exhibit B that is not otherwise confidential by law. Gov't Code § 552.007.

We now turn to your arguments with respect to Exhibit C. 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. 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 apply only to an emergency 9-1-1 district established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished to a 9-1-1 district by a service supplier. *Id.* at 2. 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. Exhibit C does not contain an originating telephone number of a 9-1-1 caller. You claim that Exhibit C contains "associated addresses provided to a 9-1-1 service by a telephone service provider." However, the only address contained in the document is the location of the incident. Furthermore, the submitted document lists the relationship of the caller to the individual who is the subject of the call in the blank provided for the address of the 9-1-1 caller. Because this is not an address, it is not protected by chapter 772. Therefore, you may not withhold any of the submitted information under chapter 772 of the Health and Safety Code.

The informer's privilege, incorporated into the Public Information Act by section 552.101, protects the identity of persons who report violations of the law to officials having the duty of enforcing particular laws. See *Roviaro v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege does not, however, apply to information that does not describe alleged illegal conduct. Open Records Decision No. 515 at 5 (1988). For example, the informer's privilege aspect of section 552.101 does not protect memoranda and written statements complaining of a fellow employee's work performance when those statements do not reveal the suspected violation of specific laws to the officials charged with enforcing those laws. See Open Records Decision Nos. 579 at 8 (1990), 515 at 3 (1988). In addition, the informer's privilege protects the content of the communication only to the extent that it identifies the informant. *Roviaro*, 353 U.S. at 60.

In this instance, the individual whose identifying information you have redacted, called to report a concern for another individual's welfare. You do not specify any violation of law that was reported by this individual. Therefore, we conclude that you have not met your burden under the informer's privilege and may not withhold any information under section 552.101.

In summary, you may withhold Exhibit B, with the exception of basic information, under section 552.108(a)(2). Exhibit C must be released to the requestor.

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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge

this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 that reads "Jennifer E. Berry". The signature is written in a cursive style with a large initial "J".

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 185599

Enc: Submitted documents

c: Ms. Beverly Jackson
1212 East Wadley, #1502
Midland, Texas 79705
(w/o enclosures)