



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2004

Mr. Jeffrey L. Moore
Brown & Hofmeister, L.L.P.
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2004-0595

Dear Mr. Moore:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID #195136.

The Town of Flower Mound (the "town"), which you represent, received a request for the names and addresses of individuals who have made complaints concerning the requestor. 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 reviewed the submitted information.

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. Assuming that the town 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. However, if the originating addresses and telephone numbers were not provided by a 911 service supplier to an emergency 911 district subject to section 772.318, they must be released to the requestor.

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). This privilege 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. 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).

Upon careful review, we have determined that the informer's privilege applies to some, but not all, of the call reports submitted to us. The privilege is invoked on pages 3 and 7 of exhibit B. You do not explain, nor is it apparent to this office, precisely which laws carrying civil or criminal penalties are alleged to have been violated. When information does not describe conduct that violates such a law, the informer's privilege does not apply. *See* Open Records Decision Nos. 515 (1988), 191 (1978). The identities of the individuals listed on pages 3 and 7 of exhibit B must therefore be disclosed. The remaining call reports clearly concern reported violations of local ordinances or state law. The identities of the persons making the reports are therefore excepted from disclosure under section 552.101 in conjunction with the informer's privilege. We have marked the information that the town may withhold.

Lastly, you contend that certain submitted information is excepted under section 552.130 of the Government Code. Section 552.130 prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state, or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. We have marked the portions of the submitted documents that must be withheld under section 552.130, provided that it relates to Texas license or motor vehicle information.

In summary, the originating telephone numbers and addresses of 911 callers are confidential and must be withheld pursuant to section 552.101 if the town is part of an emergency communication district governed by section 772.318 of the Health and Safety Code. Information we have marked is excepted from disclosure under section 552.101 in

conjunction with the common law informer's privilege. Motor vehicle record information issued by a Texas agency 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 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,



Steven W. Bartels
Assistant Attorney General
Open Records Division

SWB/seg

Ref: ID# 195136

Enc. Submitted documents

c:



(w/o enclosures)