



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2004

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2004-0737

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197655.

The Garland Police Department (the "department") received a request for a specific police report and 911 call. You claim that the department has released portions of the requested police report. You claim, however, that the audiotape of the 911 call and the highlighted portions of the police report are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, you assert that the audiotape of the 911 call and the information highlighted in yellow in the police report are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts 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[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that the requested police report and 911 call relate to an active investigation. Based on your representation, we agree that the release of the 911 call and the yellow highlighted information will interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases). Thus, the department may withhold the audiotape of the 911 call and the yellow highlighted information from disclosure under section 552.108(a)(1).

Next, you assert that the purple highlighted information is protected from disclosure under section 552.101 in conjunction with the informer's privilege. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This office interprets this exception as incorporating the "informer's privilege." *See Open Records Decision No. 515 (1988) (citing Roviario v. United States, 353 U.S. 53 (1957))*. The Texas courts have also recognized the informer's privilege. *See Aguilar v. State, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969)*. The informer's privilege aspect of section 552.101 protects the identity of a person who reports a violation or possible violation of the law to officials charged with the duty of enforcing the particular law. The privilege protects individuals who report violations to administrative agencies having a duty to enforce statutes with civil or criminal penalties. *See Open Records Decision No. 515 at 2 (1988)*. The informer's privilege does not apply if the subject of the information already knows the informer's identity. *Open Records Decision No. 208 at 1-2 (1978)*. You claim that the purple highlighted information identifies an informant. Based on our review of the submitted information, however, we find that the person whose identity you seek to protect did not report this incident to the department. Thus, the department may not withhold the purple highlighted information under section 552.101 in conjunction with the informer's privilege. To the extent that the purple highlighted information is not also marked in yellow, it must be released.

Finally, you claim that the orange highlighted information is excepted from disclosure under section 552.130. Section 552.130 of the Government Code excepts 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. Gov't Code § 552.130(a)(1),(2). Based on our review, we agree that the driver's license number at issue must be withheld from disclosure under section 552.130.

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).

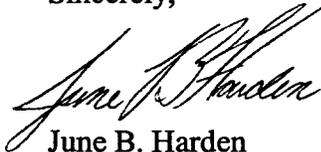
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 197655

Enc: Submitted documents and audiotape

c: Mr. Mark Sheckells
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Garland, Texas 75043
(w/o enclosures)