



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 4, 2004

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2004-0827

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195598.

The Mesquite Police Department (the "department") received a request for all police reports, calls for service, and 911 calls involving two specified addresses for the last three years. You assert that the submitted information is excepted from public disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you claim that the information submitted as Exhibit 4 is confidential under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses confidentiality provisions such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Exhibit 4 involves juvenile conduct that occurred after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply; therefore, Exhibit 4 is confidential pursuant to section 58.007(c) of the Family Code. Accordingly, the department must withhold Exhibit 4 in its entirety under section 552.101 of the Government Code.

Next, you assert that the information contained in Exhibit 2 is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibit 2 relates to a pending criminal charge for marijuana possession. Based upon this representation, we conclude that release of the information would 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).

We note, however, that section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, we conclude that the department may withhold Exhibit 2 under section 552.108(a)(1). We note that you have the discretion to release all or part of Exhibit 2 that is not otherwise confidential by law. Gov’t Code § 552.007.

You also seek to withhold the submitted call sheets and a copy of a 911 call under section 552.101 in conjunction with the informer’s privilege. 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 also 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 state that the complainants reported possible violations of law to the department. Based on your representations and our review of Exhibits 3 and 5, we agree that much of this information may be withheld under the informer's privilege. Some of the records reveal that the individual who would have cause to resent the communication is already aware of the identity of the complainants. Thus, information that would tend to identify these complainants may not be withheld under the informer's privilege. We have marked the records accordingly.

You also claim that some of the information contained in the call sheets is confidential under section 772.118 of the Health and Safety Code. In Open Records Decision No. 649 (1996), we examined several confidentiality provisions in chapter 772 of the Health and Safety Code. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 911 callers furnished by a service supplier. *See* Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. *See* Health & Safety Code §§ 772.401, *et seq.* You claim that the City of Mesquite is part of an emergency communication district that was established under section 772.118. Based on your representation, we agree that the highlighted telephone numbers and addresses of 911 callers are confidential under section 772.118. We have marked additional information that must also be withheld under this provision.

Finally, you claim that the some of the information in Exhibit 5 is motor vehicle information that 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 motor vehicle information that you have marked must be withheld from disclosure under section 552.130.

In summary, the department must withhold Exhibit 4 under section 58.007 of the Family Code. With the exception of basic information, Exhibit 2 may be withheld under section 552.108(a)(1). Exhibit 3 and portions of Exhibit 5 may be withheld under the

informer's privilege. The telephone numbers and addresses of 911 callers contained in Exhibit 5 are confidential under section 772.118 of the Health and Safety Code. In addition, the highlighted motor vehicle information contained in Exhibit 5 must be withheld under section 552.130. The remaining information must be released.¹

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).

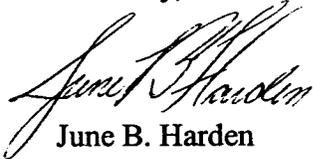
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

¹We note that one of the documents subject to release relates to an incident that has been expunged from the defendant's criminal record. You indicate that this information will be redacted prior to release.

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# 195598

Enc: Submitted documents

c: Mr. Ted Tutor
4005 Oleander Trail
Mesquite, Texas 75146
(w/o enclosures)