ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 13, 2004

Mr. Brad Norton
Assistant City Attorney
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR2004-1091

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196106.

The Austin Police Department (the "department") received a request for a specified CAD report. You claim that the submitted 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.

Section 552.108(a)(2) of the Government Code 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. You state that the requested information pertains to an investigation that concluded in a final result other than conviction or deferred adjudication. Based on your representation and our review of the submitted information, we agree that section 552.108(a)(2) is applicable.

We note, however, that basic information, which is normally found on the front page of an offense report, is generally considered public and not excepted from disclosure under section 552.108(c). Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d at 187; Open Records Decision No. 127 (1976). In Open Records Decision No. 649 at 3 (1996), this office concluded that information contained in CAD reports is substantially the same as basic information specifically held to be public in *Houston Chronicle*, and therefore, is not

excepted from public disclosure under section 552.108. *See* Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in police dispatch records or radio logs and front page offense report information expressly held to be public in *Houston Chronicle*, and thus, is generally public).

The department claims that a portion of the basic information, specifically, the caller's identity, should not be released pursuant to the informer's privilege under section 552.101.[1] *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); Open Records Decision Nos. 582 (1990), 515 (1988). The informer's privilege does not categorically protect from release the identification and description of a complainant, which is front page offense report information generally considered public by *Houston Chronicle*.[2] *See* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 187 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). The identity of a complainant, whether an "informant" or not, may only be withheld upon a showing that special circumstances exist.

We have addressed several special situations in which front page offense report information may be withheld from disclosure. For example, in Open Records Decision No. 366 (1983), this office agreed that the statutory predecessor to section 552.108 protected from disclosure information about an ongoing undercover narcotics operation, even though some of the information at issue was front page information contained in an arrest report. The police department explained how release of certain details would interfere with the undercover operation, which was ongoing and was expected to culminate in more arrests. Open Records Decision No. 366 (1983); *see* Open Records Decision No. 333 at 2 (1982); *cf.* Open Records Decision Nos. 393 (1983) (identifying information concerning victims of sexual assault), 339 (1982), 169 at 6-7 (1977), 123 (1976).

Based upon the information provided to this office, we do not believe that you have shown special circumstances sufficient to overcome the presumption of public access to the complainant's identity. Consequently, we conclude that the department may not withhold the caller's identity under the informer's privilege.

The department further asserts the originating telephone number of the 9-1-1 call is confidential under section 772.318 of the Health and Safety Code. Section 552.101 also encompasses information made confidential by statutes. Section 772.318 of the Health and Safety Code makes caller telephone numbers and addresses furnished by computerized 9-1-1

---

[1] Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

[2] The informer's privilege protects from disclosure the identity of an informant, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978). That is not the case here as evidenced by the request.

service suppliers or business service users confidential. *See* Open Records Decision No. 649 (1996). To the extent that the 9-1-1 call information at issue here was furnished by a service supplier or business service user under Health and Safety Code chapter 772, subchapter D, of which section 772.318 is a part, we agree that the originating telephone number is confidential and must be withheld.[3] The department must release the remaining information.

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).

---

[3] Open Records Decision No. 649 (1996) notes that of subchapters B, C, D, and E of chapter 772, "Local Administration of Emergency Communications," subchapters B, C, and D contain identical confidentiality provisions. *See* Health & Safety Code §§ 772.118,.218,.318. However, subchapter E, "Emergency Communication Service: Counties with Population over 1.5 Million," contains no such confidentiality provision.

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,

Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 196106

Enc. Submitted documents

c: Mr. Thomas Clark
Metropolis Apartments
2200 South Pleasant Valley Road
Austin, Texas 78741
(w/o enclosures)