



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2004

Ms. Luz Sandoval Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza – 9th Floor
El Paso, Texas 79901

OR2004-9833

Dear Ms. Walker:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the “Act”), chapter 552 of the Government Code. Your request was assigned ID# 213201.

The El Paso Police Department (the “department”) received a request for information relating to a 911 call. You inform us that you have released some of the requested information. You claim that the remaining information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

We first note that some of the information at issue is the subject of a previous determination issued to the department under section 552.301 of the Act. *See Gov’t Code § 552.301(a)*. You seek to withhold the address and telephone number of a 911 caller under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.¹ In Open Records Letter No. 2003-0708 (2000), we granted the department a previous determination that originating telephone numbers and addresses of 911 callers furnished to the department by a service supplier established in accordance with chapter 772 of the Health and Safety Code are confidential under section 772.318 of the Health and Safety Code and thus excepted from disclosure under section 552.101 of the Government Code. You do not inform us of

¹*See* Open Records Decision No. 649 (1996) (Health & Safety Code §§ 772.118, 772.218, and 772.318 make confidential originating telephone numbers and addresses of 911 callers furnished by service suppliers to local emergency communications districts established under Health & Safety Code ch. 772).

any change in the law, facts, and circumstances on which the prior ruling is based. We therefore conclude that you must withhold the highlighted address and telephone number of the 911 caller in Exhibit B in accordance with our decision in Open Records Letter No. 2003-0708 (2003). *See also* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

Next, we address your claim with regard to the remaining information at issue. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You raise section 552.101 in conjunction with the common-law informer's privilege. This privilege has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The common-law informer's privilege protects 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. *See* 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." *See* 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).

You contend that the name of the 911 caller is protected by the informer's privilege. You state that this individual reported illegal gambling and requested anonymity. Based on your representations, we conclude that the department may withhold the name of the 911 caller under section 552.101 in conjunction with the common-law informer's privilege.

In summary: (1) the department must withhold the 911 caller's address and telephone number in accordance with the previous determination issued to the department in Open Records Letter No. 2003-0708 (2003); and (2) the department may withhold the 911 caller's name under section 552.101 in conjunction with the common-law informer's privilege..

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).

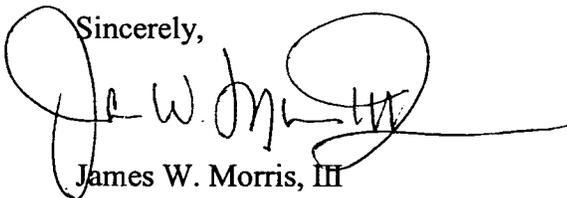
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large loop at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 213201

Enc: Submitted documents

c: Mr. Elbert L. Maxwell
4712 Rolling Stone
El Paso, Texas 79924
(w/o enclosures)