



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2006

Mr. Trenton C. Nichols
Brown & Hofmeister, LLP
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2006-10094

Dear Mr. Nichols:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 258214.

The McKinney Police Department (the "department") received a request for "police reports generated for calls to report disturbances at" a specific address. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108, the "law enforcement exception," provides in relevant part as follows:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (a)(2). 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 reports pertain to cases that have been closed and no further action will be taken. One of the documents that you have submitted is an appraisal record. You do not explain, nor can we discern, how this document is related to any of the cases at issue. Since you have failed to demonstrate the applicability of section 552.108(a)(2) to this document, it must be released. However, based on your representations and our review, we conclude that you have demonstrated the applicability of section 552.108(a)(2) to the remaining information.¹

We note, however, that basic information is generally considered public and is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c); *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); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information); *see also* Open Records Decision No. 649 at 3 (1996) (stating that 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*). Thus, a governmental body must generally release all basic information, including information that identifies and describes the complainant. Open Records Decision No. 127 at 4.

You seek, in this instance, to withhold the complainants' identities under section 552.101 in conjunction with the informer's privilege. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses the informer's privilege. *See* Gov't Code § 552.101; *see also Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); Open Records Decision No. 582 (1990). The informer's privilege 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, we have marked the information that may be withheld under the informer's privilege. We find, however, that you have failed to demonstrate that the individual who would have cause to resent the communication does not know the identities of the remaining complainants. Thus, the identities of the remaining complainants must be released.

¹Because section 552.108(a)(2) is dispositive, we need not address your arguments under section 552.130 and the claimed provisions of the Health and Safety Code.

In summary, we have marked the information that may be withheld under the informer's privilege. The identities of the remaining complainants must be released along with the rest of the basic information. The department may withhold the remaining portions of Exhibit B under section 552.108(a)(2).

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

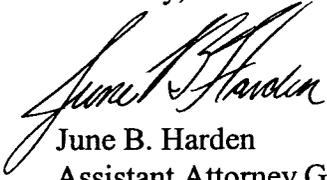
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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. 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 "June B. Harden". The signature is fluid and cursive, with the first name "June" being particularly prominent.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/sdk

Ref: ID# 258214

Enc: Submitted documents

c: Mr. Faris Chilmeran
6000 Blosson Court
McKinney, Texas 75070
(w/o enclosures)