ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 26, 2006

Mr. Trenton C. Nichols
Brown & Hofmeister. L.L.P.
For the City of Mckinney
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2006-11162

Dear Mr. Nichols:

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# 260251.

The McKinney Police Department (the "department"), which you represent, received a request for information pertaining to domestic disturbances at a specified address from June 2005 to June 2006. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 information protected by other statutes. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished to a 9-1-1 district by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000.

Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

Accordingly, to the extent the City of McKinney (the "city") is part of a 9-1-1 emergency communication district subject to section 772.118, section 772.218, or section 772.318 of the Health and Safety Code and the originating telephone numbers of the 9-1-1 callers in the submitted information were furnished by a 9-1-1 service supplier, then these telephone numbers must be withheld from disclosure under section 552.101 as information deemed confidential by statute. To the extent the city is not part of a 9-1-1 emergency communication district under chapter 772 of the Health and Safety Code, or the telephone numbers of the 9-1-1 callers in the submitted information were not furnished by a 9-1-1 service supplier, they may not be withheld under section 552.101 on the basis of chapter 772 of the Health and Safety Code.

You also claim that the identifying information of 9-1-1 callers in the submitted information is excepted under section 552.101 in conjunction with the common law informer's privilege. The common law informer's 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 informer's privilege protects from disclosure 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. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The 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." 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). The informer's privilege does not, however, apply to information that does not describe alleged illegal conduct. Open Records Decision No. 515 at 5 (1988). In addition, the privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

In this instance, we agree that some of the information at issue identifies persons who reported alleged violations of law to the department. We note the alleged violations at issue carry criminal penalties. Accordingly, we have marked the identifying information that the department may withhold pursuant to section 552.101 in conjunction with the informer's privilege. However, the department may not withhold the remaining identifying information in the submitted information because it does not identify a person who reported the alleged illegal conduct at issue, or, the identified person did not report illegal conduct.

In summary, to the extent the City of McKinney is part of a 9-1-1 emergency communication district subject to section 772.118, section 772.218, or section 772.318 of the Health and

Safety Code and the originating telephone numbers of the 9-1-1 callers in the submitted information were furnished by a 9-1-1 service supplier, then these telephone numbers must be withheld from disclosure under section 552.101 of the Government Code. The department may withhold the identifying information we have marked pursuant to section 552.101 of the Government Code in conjunction with the common law informer's privilege. The remaining submitted information must be released.

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).

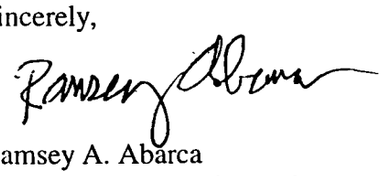
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Enc. Submitted documents

Ref: ID# 260251

c: Mr. James Simmons
2519 Denison
Denton, Texas 76201
(w/o enclosures)