



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2008

Ms. Julie V. Pandya
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2008-14503

Dear Ms. Pandya:

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# 325604.

The City of Waco (the "city") received a request for any and all information, police reports, notes, copies of 911 tapes, or any records of a specified call and investigation. You state that you have made the submitted information available to the requestor with redactions based on your claimed exceptions. You claim that a portion of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted any police reports or notes for our review. To the extent any information responsive to this portion of the request existed on the day the city received the request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). We will now address your claimed exceptions for the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Gov't Code § 552.101. You contend that the originating telephone numbers of 9-1-1 caller contained in the submitted

information is excepted from disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772, and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). We understand that the city is part of an emergency communication district that was established under section 772.318.¹ We note that section 772.318 is applicable only to information that was obtained from a 9-1-1 service provider. *See* ORD 649 at 3 (language of confidentiality provision controls scope of its protection). You indicate that the telephone numbers you have highlighted in the submitted information were obtained from a 9-1-1 service provider. Thus, the city must withhold the highlighted telephone numbers under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

You also raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The 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 (1998), 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." *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). The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

You state that the highlighted portions of the 911 CAD report and a portion of the submitted audio recording identify an individual who reported an alleged violation of the law to the city's police department. You explain that the activities concerned the possible violation of the Texas Penal Code, which carries criminal penalties. Thus, based on your representations and our review, we conclude that the city has demonstrated the applicability of the common-law informer's privilege in this instance. Thus, the city may withhold the information you have marked in the submitted 911 CAD report as well as the corresponding information in the submitted audio recording under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. In the event that the city does not have the

¹Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

technological capacity to redact the corresponding information from the audio recording, the city may withhold the audio recording in its entirety.

Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The city must withhold the Texas license plate number contained in the submitted 911 CAD report and in the submitted audio recording under section 552.130 of the Government Code. In the event that the city does not have the technological capacity to redact the license plate number from the audio recording, the city must withhold the audio recording in its entirety.

In summary, the city must withhold the telephone numbers you have highlighted under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The city may withhold the informer's identifying information contained in the submitted 911 CAD report and the submitted audio recording under section 552.101 in conjunction with the informer's privilege. If the city lacks the technological capacity to redact such information from the audio recording, the city may withhold the audio recording in its entirety. The city must withhold the license plate number contained in the submitted 911 CAD report and the submitted audio recording under section 552.130. If the city lacks the technological capacity to redact the license plate number from the audio recording, the city must withhold the audio recording in its entirety. The remaining 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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

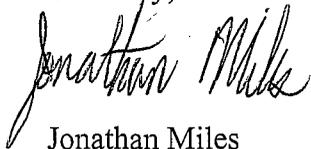
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 325604

Enc. Submitted documents

c: Mr. Brandon E. Manus
P.O. Box 540573
Grand Prairie, Texas 75054
(w/o enclosures)