OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

January 25, 2002

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2002-0388

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157791.

The City of Mesquite Police Department (the "department") received a request for a list of all calls made to the requestor's home since January. You indicate that you have released some of the requested information. However, you claim that portions of the requested information are 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.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You contend that portions of the submitted information are confidential under section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides as follows:

> (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:
>
> > (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
> >
> > (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because the information at issue relates to allegations of child abuse and neglect, the information is within the scope of section 261.201 of the Family Code. We note that the submitted documents contain additional information you have not marked under section 261.201 that relates to an allegation of child abuse and therefore falls under section 261.201. You indicate that the department has not adopted a rule that governs the release of this type of information. Consequently, we agree that the documents you have marked under section 261.201 of the Family Code as well as the additional document relating to alleged child abuse, which we have marked, are confidential pursuant to section 261.201 and must be withheld in their entirety under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).[1]

You also contend that portions of the submitted information are confidential under sections 771.061 and 772.318 of the Health and Safety Code. Section 771.061(a) of the Health and Safety Code makes confidential "[i]nformation that a service provider of telecommunications service is required to furnish to a governmental entity in providing computerized 9-1-1 service" as well as "[i]nformation that is contained in an address database maintained by a governmental entity or a third party used in providing computerized 9-1-1 service." Thus, to the extent the department provides computerized 9-1-1 service and the telephone numbers you have highlighted were required to be furnished to the department by a telecommunications service provider, the telephone numbers are confidential under section 771.061 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 661 at 2 (1999).

Even if the telephone numbers are not confidential under section 771.061 of the Health and Safety Code, they may be confidential under chapter 772 of the Health and Safety Code. In Open Records Decision No. 649 (1996), which interpreted section 772.318 of the Health and Safety Code, we examined several confidentiality provisions in chapter 772 of the Health and Safety Code. To the extent that the portions of the information containing the highlighted telephone numbers involve an emergency 9-1-1 district established in accordance with chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts, the information may be confidential under chapter 772. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier. *See* Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 9-1-1 telephone numbers and

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[1]We note, however, that if the Texas Department of Regulatory Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(g).

addresses. *See* Health & Safety Code §§ 772.401, *et seq.* Thus, if the emergency communication district here is subject to section 772.118, 772.218, or 772.318, the originating telephone numbers are protected from public disclosure under section 552.101 as information deemed confidential by statute.

Finally, you contend that portions of the submitted information are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

> (a) Information is excepted from the requirement of Section 552.021 if the information relates to:
>
> > (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
> >
> > (2) a motor vehicle title or registration issued by an agency of this state[.]

We agree that the information you have marked under section 552.130 of the Government Code relates to motor vehicle titles and registrations issued by an agency of the State of Texas and therefore must be withheld under section 552.130.

In summary, the department must withhold the records you have marked under section 261.201 of the Family Code as well as an additional record we have marked under that provision in conjunction with section 552.101 of the Government Code. The department must withhold the highlighted telephone numbers under section 771.061 of the Health and Safety Code if a telecommunications service provider was required to provide this information to the department for purposes of providing computerized 9-1-1 service. Similarly, the department must withhold the highlighted telephone numbers to the extent the emergency communication district at issue is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code. Finally, the department must withhold the information you have marked under section 552.130 as information relating to titles and registrations issued by an agency of this state. The department must release the remainder of the submitted 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).

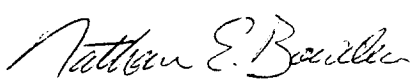
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Public 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. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 157791

Enc: Submitted documents

c: Ms. Sarah L. Stidham
3408 Bahamas
Mesquite, Texas 75150
(w/o enclosures)