



July 22, 2002

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

OR2002-3997

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# 166048.

The Mesquite Police Department (the "department") received one request for copies of an accident report and investigative file pertaining to a specified accident and a second request for copies of recordings and records pertaining to that accident. You claim that portions of the submitted information are excepted from disclosure pursuant to sections 552.101, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the telephone numbers that you have highlighted are excepted from disclosure pursuant to section 552.101 in conjunction with chapter 772 of the Health and Safety Code.¹ We assume that any emergency 911 district involved here was established in accordance with chapter 772, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218 and 772.318 make the originating telephone numbers and addresses of 911 callers furnished by a service supplier confidential. *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.

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

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 911 telephone numbers and 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 of the Health and Safety Code, the originating telephone numbers that you have highlighted are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code. Otherwise, the department must release these numbers to the requestor.

You claim that all images of peace officers depicted on the photographs that you submitted to us for review are excepted from disclosure pursuant to section 552.119 of the Government Code. Section 552.119 excepts from disclosure a photograph of a peace officer that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies.² The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. *See* Gov't Code § 552.119(a). This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. *See* Open Records Decision No. 502 (1988). We assume for purposes of this ruling that none of the exceptions in section 552.119 are applicable in this instance. Based on that assumption, we conclude that the department must withhold all images of peace officers contained in the submitted photographs from disclosure pursuant to section 552.119 of the Government Code.

Finally, you claim that the remaining highlighted information is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. We agree that the remaining highlighted information is excepted from disclosure under section 552.130. We also find that the department must withhold additional motor vehicle information that we have marked from disclosure under section 552.130. Finally, we conclude that the department must withhold all Texas license plate numbers that are visible on the submitted photographs from disclosure pursuant to section 552.130 of the Government Code. However, we also note that the first requestor provided the department with information indicating that he obtained authorization from Mr. Gabriel Cortez to obtain records from the department concerning Mr. Cortez. Accordingly, we conclude that the department must release to Mr. Barnes all section 552.130 information that is both highlighted and marked pertaining to Mr. Cortez. *See* Gov't Code § 552.023 (providing that individual's authorized representative has limited special right of access to information when only basis for excepting information from disclosure involves protection of individual's privacy interest); *see also* Open Records Decision No. 481 (1987).

² The term "peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

In summary, the department must withhold the highlighted originating telephone numbers from disclosure pursuant to section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code, if the emergency communication district here is subject to section 772.118, 772.218 or 772.318 of the Health and Safety Code. The department must withhold all images of peace officers contained in the submitted photographs from disclosure pursuant to section 552.119 of the Government Code. The department must withhold the remaining highlighted information pursuant to section 552.130 of the Government Code. The department must withhold additional motor vehicle information that we have marked from disclosure under section 552.130. Finally, the department must withhold all Texas license plate numbers that are visible on the submitted photographs from disclosure pursuant to section 552.130. However, the department must release to Mr. Barnes all section 552.130 information that is both highlighted and marked pertaining to Mr. Cortez. The department must release the remaining submitted information to the requestors.

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).

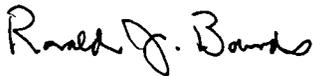
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department 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. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 166048

Enc. Marked documents

cc: Mr. J. David Rouse
The Rouse Group, Inc.
106 North 11th Street
Garland, Texas 75040
(w/o enclosures)