



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 14, 2006

Mr. Randy A. Stoneroad
Police Legal Advisor
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2006-02535

Dear Mr. Stoneroad:

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# 244013.

The Corpus Christi Police Department (the "department") received a request for all recordings, vehicle GPS location tapes, and documents related to a specified arrest. You state that you have released some of the requested information, but 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 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information deemed confidential by other statutes. You assert that the requested Automatic Vehicle Locator ("AVL") records are confidential under the Texas Homeland Security Act, specifically sections 418.176 and 418.181 of the Government Code. Section 418.176 provides in part:

- (a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

- (1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Gov't Code § 418.176(a).

You state that the AVL records are “information collected, assembled, and maintained by the City of Corpus Christi [(the “city”)] for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity.” You inform us that “AVL is a technology requirement of the United States Department of Homeland Security.” Further, you state that the requested AVL records relate to the staffing requirements of local area emergency response providers, including the city police department. You state that

the AVL records at issue are utilized, for police safety and accountability. The goal is to know where every police officer is located and to have the ability to dispatch emergency backup to said police officer during dangerous and life-threatening situations. Also all police vehicles and equipment need to be located and tracked through an AVL.

You assert that an AVL record “locates the staff of each provider in real-time and shows the patterns of deployment and methods of response, response time, reaction and location[.]” Having considered your representations and reviewed the submitted information, we conclude that the AVL records are confidential under section 418.176 of the Government Code and must be withheld under section 552.101.¹

You claim that the submitted offense report is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Section 261.201(a) 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:

¹As our ruling is dispositive for this information, we need not address your arguments under section 418.181.

- (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.

Fam. Code § 261.201(a). The report at issue pertains to a driving while intoxicated investigation. You have not demonstrated that this report was used or developed in an investigation of alleged or suspected child abuse or neglect. *See* Fam. Code §§ 261.001(1), (4) (defining “abuse” and “neglect” for the purposes of chapter 261 of the Family Code). Accordingly, the department may not withhold this report under section 552.101 in conjunction with section 261.201 of the Family Code.

Next, we address your claim that the information you have marked in the submitted 9-1-1 transcript is confidential under section 552.101 of the Government Code in conjunction with section 771.061 of the Health and Safety Code. Section 771.061(a) makes confidential certain information that telephone companies and the United States Postal Service furnish a governmental entity that provides computerized 9-1-1 emergency services. *See* Open Records Decision No. 661 (1999). We understand you to represent that the city operates a computerized 9-1-1 service. Provided that the city does in fact operate a computerized 9-1-1 service, and to the extent that the submitted information was required to be furnished to the city by a telecommunications service provider or is contained in an address database used in providing computerized 9-1-1 service, we agree that the information you have marked must be withheld under section 552.101 in conjunction with section 771.061. *See id.* If the city does not operate a computerized 9-1-1 service, or if it does operate such a service but the information at issue was not required to be furnished to the city by a telecommunications service provider and is not contained in an address database used in providing computerized 9-1-1 service, then the information at issue is not excepted from disclosure under section 552.101 in conjunction with section 771.061.

To the extent that section 771.061 of the Health and Safety Code is not applicable, we address your remaining claims for the information you have marked in the 9-1-1 transcript. You also claim that this information is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 772.118, 772.218, and 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code makes the originating telephone numbers and addresses of certain 9-1-1 calls confidential. This chapter 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 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.

You contend that the originating telephone number and address of a 9-1-1 caller that are contained in the submitted 9-1-1 transcript are confidential under chapter 772. To the extent that the originating address and telephone number of the 9-1-1 caller were supplied by a 9-1-1 service supplier to a 9-1-1 district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code, the address and telephone number must be withheld from disclosure under section 552.101 as information deemed confidential by statute. However, if the address and telephone number were not provided by a 9-1-1 service supplier to a 9-1-1 district subject to section 772.118, 772.218, or 772.318, then the address and telephone number may not be withheld on this basis.

You note that the remaining information includes Texas motor vehicle record information. Section 552.130 of the Government Code exempts from public disclosure information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1). We note, however, that if the requestor is the attorney for the individual to whom the Texas motor vehicle record information at issue pertains, he has a special right of access to such information under section 552.023 of the Government Code. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on grounds that information is considered confidential by privacy principles). If the requestor is not the attorney for the individual at issue, then the department must withhold the Texas motor vehicle record information we have marked under section 552.130.

You further note that the remaining information includes a social security number. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. However, if the requestor is the attorney for the individual to whom the submitted social security number pertains, he has a right of access to it pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b). If the requestor is not the attorney for the individual at issue, then the department must withhold the social security number under section 552.147.²

In summary, the submitted AVL records must be withheld under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. Provided that the city does in fact operate a computerized 9-1-1 service, and to the extent that the information you have marked in the submitted 9-1-1 transcript was required to be furnished to the city by a telecommunications service provider or was contained in an address database

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

used in providing computerized 9-1-1 service, such information must be withheld under section 552.101 of the Government Code in conjunction with section 771.061 of the Health and Safety Code. To the extent that section 771.061 of the Health and Safety Code does not apply, if the originating address and telephone number of the 9-1-1 caller were supplied by a 9-1-1 service supplier to a 9-1-1 district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code, the address and telephone number must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by statute. If the requestor is not the attorney for the individual to whom the marked Texas motor vehicle record information and social security number pertains, such information must be withheld under sections 552.130 and 552.147 of the Government Code, respectively. 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 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 'Caroline E. Cho', with a long, sweeping underline.

Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 244013

Enc. Submitted documents

c: Mr. Christopher J. Gale
Gale, Wilson & Sanchez
115 East Travis, Suite 618
San Antonio, Texas 78205
(w/o enclosures)