



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 22, 2006

Mr. Galen Gatten  
Assistant City Attorney  
Office of the City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2006-06623

Dear Mr. Gatten:

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# 252144.

The Midland Police Department (the "department") received a request for a specified report and the related 9-1-1 call. You state that you have released basic information from the requested report. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *See* Gov't Code § 552.301(b). In this instance, you state that the department received the instant request on March 28, 2006. However, the department did not request a decision from this office until April 12, 2006. Consequently, we find that the department failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption

of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Because the department's claim under section 552.108 is not a compelling reason for non-disclosure, we find that the submitted information may not be withheld on that basis. *But see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108 in certain circumstances). However, as sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address your arguments under these exceptions.

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 protected by other statutes. You contend that the originating telephone number and address of the 9-1-1 caller contained in the submitted information are confidential under 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). You indicate that the City of Midland is part of an emergency communication district that was established under section 772.318.<sup>1</sup> You further state that the submitted originating telephone number and address of the 9-1-1 caller were furnished by a service supplier. Based on your representation and our review of the submitted information, we conclude that the department must withhold the originating telephone number and address of the 9-1-1 caller pursuant to section 552.101 in conjunction with section 772.318 of the Health and Safety Code. We note, however, that the submitted audio recording contains the originating address of the 9-1-1 caller that was provided by the caller and not a service supplier. Consequently, the address on the audio recording is not confidential under section 772.318 and may not be withheld under section 552.101 on that basis.

You note that the remaining information includes Texas driver's license numbers. Section 552.130 of the Government Code excepts 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). However, because section 552.130 protects individual privacy interests, the requestor has a special right of access to his own Texas driver's license number under section 552.023 of the Government Code. *See id.* § 552.023(b) (governmental body

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

may not deny access to person to whom information relates on grounds that information is considered confidential by privacy principles). The department must only withhold the remaining Texas driver's license number, which we have marked, under section 552.130.

We note that the remaining information includes social security numbers. 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.<sup>2</sup> *Id.* § 552.147. However, because section 552.147 protects individual privacy interests, the requestor has a special right of access to his own social security number under section 552.023 of the Government Code. *See* Gov't Code § 552.023(b). The department must only withhold the remaining social security number, which we have marked, under section 552.147.<sup>3</sup>

In summary, we conclude as follows: (1) except for the address found on the submitted audio recording, the originating telephone number and address of the 9-1-1 caller must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code; (2) the marked Texas driver's license number must be withheld under section 552.130 of the Government Code; and (3) the marked social security number must be withheld under section 552.147 of the Government Code. The remaining information must be released.<sup>4</sup>

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).

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<sup>2</sup>This office will raise a mandatory exception to disclosure on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We 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.

<sup>4</sup>Because some of the information is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the requestor or the requestor's authorized representative, the department should again seek our decision.

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,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 252144

Enc. Submitted documents

c: Mr. Bill S. Franks  
3506 Douglas  
Midland, Texas 79703  
(w/o enclosures)