



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2006

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

OR2006-09341

Dear Ms. Graham:

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# 256876.

The Mesquite Police Department (the "department") received a request for information involving two named individuals, two specified addresses, and a particular time interval. You state that the department will release some of the requested information. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 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 [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You seek to withhold the information submitted as Exhibit 2 under section 261.201. Because that information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code, we agree that it falls within the scope of section 261.201(a). Additionally, we have marked information contained in Exhibit 3 that also is encompassed by section 261.201. As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we conclude that the department must withhold Exhibit 2 and the marked information in Exhibit 3 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

You also raise section 552.101 in conjunction with section 772.118 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218 and 772.318 are applicable to emergency 911 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 911 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. You state that the City of Mesquite is part of an emergency communication district established under section 772.118. You indicate that the addresses and telephone numbers that you have highlighted in Exhibit 3 are those of 911 callers that were furnished by a 911 service supplier. Based on your representations, we agree that the department must withhold the highlighted information that relates to 911 callers under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code.¹

You also seek to withhold information contained in Exhibit 3 under section 552.101 in conjunction with common-law privacy. The common-law right to privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See*

¹As we are able to make this determination, we do not address your claim under section 771.061 of the Health and Safety Code.

Indus. Found. v. Tex. Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses certain types of personal financial information. This office has determined that financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). We agree that the department must withhold the personal financial information that you have highlighted in Exhibit 3 under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we address your claim under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information submitted as Exhibit 4 is related to a pending criminal investigation. Based on your representation, we conclude that section 552.108(a)(1) is applicable to Exhibit 4. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The department must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the remaining information in Exhibit 4 under section 552.108(a)(1).²

²As we are able to make this determination, we need not address your claim under section 552.103 of the Government Code, except to note that section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

You also raise section 552.130 of the Government Code. This section 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 or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). We agree that the Texas driver's license and motor vehicle information that you have highlighted in Exhibit 3 must be withheld under section 552.130. We have marked additional information that must also be withheld under this exception.

Lastly, 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.³ We agree that the social security number that you have highlighted in Exhibit 3 must be withheld under section 552.147.

In summary: (1) the department must withhold Exhibit 2 and the information that we have marked in Exhibit 3 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) the highlighted information that relates to 911 callers must be withheld under section 552.101 in conjunction with section 772.118 of the Health and Safety Code; (3) the highlighted personal financial information must be withheld under section 552.101 in conjunction with common-law privacy; (4) except for the basic information that must be released under section 552.108(c), the department may withhold Exhibit 4 under section 552.108(a)(1) of the Government Code; (5) the highlighted Texas driver's license and motor vehicle information, as well as the information that we have marked, must be withheld under section 552.130 of the Government Code; and (6) the highlighted social security number must be withheld under section 552.147 of the Government Code. The rest of the submitted information must be released.⁴

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

³We 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.

⁴We note that some of the information to be released would be excepted from public disclosure to protect the requestor's privacy. In this instance, however, the requestor has a special right of access to his own private information. *See* Gov't Code § 552.023(a). Should the department receive another request for these same records from a person who would not have a right of access to the requestor's private information, the department should resubmit these records and request another decision. *See id.* §§ 552.301(a), .302.

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).

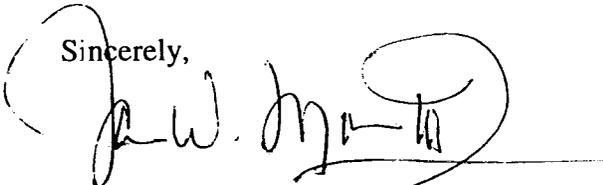
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 "James W. Morris, III". The signature is written in a cursive style with a large, looping flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 256876

Enc: Submitted documents

c: Mr. Eric Shiners
3526 Bonita Vista Circle
Mesquite, Texas 75150
(w/o enclosures)