ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2006

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

OR2006-11769

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# 261545.

The City of Midland (the "city") received a request for information pertaining to a specified 9-1-1 call. You claim that the requested 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 protected by other statutes. You claim that the submitted information is confidential under section 58.007 of the Family Code. This section makes juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 confidential and reads in relevant part as follows:

> (c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

> (1) if maintained on paper or microfilm, kept separate from adult files and records;
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> (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
>
> (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 51.02(2)(A) of the Family Code defines "child" for purposes of section 58.007 as a "person who is . . . ten years of age or older and under 17 years of age." *Id.* § 1.02(2)(A). Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Upon review, we find that you have not explained, nor does the submitted information otherwise indicate, how any portion of it involves any identified suspect or offender who is a child as defined by section 51.02 of the Family Code. As such, we conclude that the submitted information may not be withheld under section 552.101 of the Government Code on the basis of section 58.007 of the Family Code.

You also raise section 552.101 in conjunction with section 772.318 of the Health & Safety Code for the telephone number and address contained in the submitted information. Chapter 772 of the Health and Safety Code authorizes the development of 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). We note, however, that the information in question was provided by the 9-1-1 caller and not by a 9-1-1 service supplier. Therefore, this information is not confidential under section 772.318 of the Health and Safety Code and may not be withheld on that basis under section 552.101 of the Government Code. *See* Open Records Decision No. 649 at 3 (language of confidentiality provision controls scope of its protection). As you raise no further exceptions to disclosure, we conclude that the submitted 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 ten 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,

Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 261545

Enc. Submitted documents

c: Mr. Gary Truex
2506 East Gold Course Road
Midland, Texas 79706
(w/o enclosures)