



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2006

Mr. Trenton C. Nichols
Assistant Town Attorney
Town of Flower Mound
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2006-13754

Dear Mr. Nichols:

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# 265017.

The Town of Flower Mound (the "town"), which you represent, received a request for all reports regarding the two requestors. You claim that the 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.

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. Section 261.201(a) of the Family Code provides as follows:

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:

- (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). A portion of the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261; therefore, this information is within the scope of section 261.201. You do not indicate that the town has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Based on this assumption, we conclude that Exhibits B and C and report number 06016770 in Exhibit D are confidential pursuant to section 261.201 of the Family Code, and the town must withhold this information under section 552.101 of the Government Code.¹ See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

You claim that some of the information in Exhibit E is excepted from disclosure under section 552.101 of the Government Code in conjunction with Chapter 772 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 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 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. 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 9-1-1 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, then the town must withhold the callers' originating addresses and phone numbers in Exhibit E under section 552.101 to the extent this information was provided by a service supplier.

We now address your assertion that the reports in Exhibit D are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal

¹We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. See Fam. Code § 261.201(g); Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Sess. Law Serv. 611, 641 ("A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.").

investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the reports in Exhibit D relate to criminal investigations that have concluded in results other than conviction or deferred adjudication. Upon review, we agree that section 552.108(a)(2) is applicable to report numbers 0610066, 0525412, 0447762, 0215510, and 0210948 in Exhibit D.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *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), including a detailed description of the offense. Thus, with the exception of basic information, which must be released, the town may withhold report numbers 0610066, 0525412, 0447762, 0215510, and 0210948 in Exhibit D under section 552.108(a)(2) of the Government Code. We note that you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

In addition, you claim portions of the remaining information are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 of the Government Code excepts from 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.” Gov't Code § 552.130. Accordingly, the town must withhold the marked Texas motor vehicle information under section 552.130 of the Government Code.

In summary, the town must withhold Exhibits B and C and report number 06016770 in Exhibit D under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the emergency communication district here is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code, then the town must withhold the callers’ originating addresses and phone numbers in Exhibit E under section 552.101 of the Government Code to the extent this information was provided by a service supplier. With the exception of basic information, the town may withhold report numbers 0610066, 0525412, 0447762, 0215510, and 0210948 in Exhibit D under section 552.108(a)(2) of the Government Code. The town must withhold the marked driver’s license information under section 552.130 of the Government Code. The remaining submitted information must be released 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).

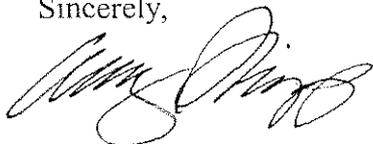
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/sdk

Ref: ID# 265017

Enc. Submitted documents

c: Mr. and Mrs. Chris and Cynthia Jinkins
3016 Hamlett
Flower Mound, Texas 75028
(w/o enclosures)