



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 14, 2007

Mr. Nathan C. Barrow
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2007-07544

Dear Mr. Barrow:

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# 281739.

The City of Fort Worth (the "city") received a request for 10 categories of information including all calls, fire and investigation reports, videotapes, statements, photographs, and 9-1-1 call reports for three specified addresses. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have only submitted responsive information to four of the ten categories requested. Therefore, to the extent responsive information for the remaining six categories of information exist we assume that it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301, .302.

Next, we note that portions of the requested information are subject to previous rulings issued by this office. In Open Records Letter No. 2007-00645 (2007), the requestor sought incident report number 06-39907. We held that the city must withhold this incident report pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. In Open Records Letter No. 2007-02563 (2007), information pertaining to a specified address was sought. In that ruling, we held that the city must withhold incident report number 05-125642 pursuant to section 552.101 of the Government Code in

conjunction with 58.007 of the Family Code. We presume that the pertinent facts and circumstances have not changed since the issuance of these prior rulings. Thus, we determine that the city must continue to rely on these prior rulings with respect to any information requested in those instances that is also at issue here. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). To the extent the requested information was not addressed in Open Records Letter Nos. 2007-00645 and 2007-02563, we will address your claim for exception from disclosure.

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 section encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See* Fam. Code § 51.02(2). Section 58.007(c) reads as follows:

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;
- (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.

Id. § 58.007. Upon review, we agree that report number 04050748 is a juvenile law enforcement record that pertains to conduct that occurred after September 1, 1997. Because none of the exceptions in section 58.007 apply, we determine that report number 04050748

is confidential under section 58.007(c) and must be withheld pursuant to section 552.101 of the Government Code.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication 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 772.318 applies to an emergency communication district for a county with a population of more than 20,000. We understand you to assert that the city is part of an emergency communication district that was established under section 772.218, which provides in part:

(a) As part of a computerized 9-1-1 service, a service supplier shall furnish for each call the telephone number of the subscriber and the address associated with the number.

...

(c) Information furnished under this section is confidential and is not available for public inspection.

Health & Safety Code § 772.218(a), (c).¹ Based on your representations and our review, we determine that the originating telephone numbers of the 9-1-1 callers, which you have marked, and the additional information we have marked in Exhibit D are confidential under section 772.218 of the Health and Safety Code. Therefore, the city must withhold this information under section 552.101 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.”² Gov’t Code § 552.130. In accordance with section 552.130 of the Government Code, the city must withhold the Texas issued motor vehicle record information we have marked in Exhibit D.

¹Although you cite to section 772.318 of the Health and Safety Code in your comments to this office, we understand you to assert that section 772.218 is applicable in this instance. As you acknowledge, subchapter C of chapter 772 governs counties with populations of more than 860,000. *See* Health & Safety Code § 772.204. Section 772.318 is located in subchapter D of chapter 772, which governs counties with populations of more than 20,000. *See id.* § 772.304.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the city must continue to rely upon Open Records Letter Nos. 2007-00645 and 2007-02563, to the extent that the requested information is covered by these rulings. The city must withhold incident report number 04050748 pursuant to section 552.101 in conjunction with 58.007 of the Family Code. The city must withhold the originating phone numbers and addresses on the calls-for-service reports under section 552.101 in conjunction with section 772.218 of the Health and Safety Code. The city also must withhold the Texas issued motor vehicle record information we have marked pursuant to section 552.130. The remaining information in Exhibit D 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/eeg

Ref: ID# 281739

Enc. Submitted documents

c: Ms. Kimberly Munson
The Barbknecht Firm
500 North Central Expressway, Suite 325
Plano, Texas 75074
(w/o enclosures)