



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 5, 2008

Mr. Ken Johnson  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2008-01712

Dear Mr. Johnson:

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# 301467.

The Waco Police Department (the "department") received a request for information pertaining to a specified incident. You state that some of the requested information will be made available to the requestor. You claim that a portion of the submitted 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 that is made confidential by statute. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 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 assert that the department is within an emergency communication district that is subject to section 772.318. You claim that the 9-1-1 caller's originating telephone number and address in the submitted call report is confidential under section 772.318 of the Health and Safety Code. Upon review, we agree that the department must withhold the highlighted telephone

number and address of the 9-1-1 caller under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, we conclude that the additional highlighted information is neither telephone numbers or addresses and therefore is not confidential under section 772.318 and may not be withheld under section 552.101. See ORD 649 at 3 (language of confidentiality provision controls scope of protection). We have marked this information for release.

You also assert that the submitted audio CD contains the phone number and address of the 9-1-1 caller spoken during the 9-1-1 call. However, this information was provided by the caller and not supplied by a 9-1-1 service supplier to an emergency communication district. Therefore, the information on the CD is not confidential and may not be withheld under this exception.

Next, you claim that a portion of incident report number 07-26887 is excepted from public disclosure 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 in incident report number 07-26887 relates to an open and pending criminal investigation. Based upon this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. 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).

However, 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*. We note that some of the information you seek to withhold under section 552.108, including a detailed description of the offense, constitutes basic information for purposes of *Houston Chronicle*. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you indicate you will release, the department may withhold incident report number 07-26887 under section 552.108(a)(1) of the Government Code.

Finally, you state that incident report number 07-26888 contains Texas motor vehicle record information. Section 552.130 of the Government Code provides in relevant part:

- (a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Accordingly, the department must withhold the Texas motor vehicle record information you have highlighted under section 552.130 of the Government Code. However, we note that the request indicates that the requestor represents an insurance company. As such, this requestor may be the authorized representative of the individual to whom some of the marked motor vehicle record information belongs. Section 552.023 of the Government Code provides a person or a person's authorized representative a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person's privacy interests. *Id.* § 552.023(a). Section 552.130 is intended to protect privacy interests. In this instance, it is not clear that the requesting representative of the insurance company is the vehicle owner's authorized representative. Therefore, we are forced to rule conditionally. To the extent the requestor has a right of access to his insured's Texas motor vehicle record information under section 552.023, the department must release the marked information under section 552.130. To the extent the requestor does not have a right of access to the information at issue, it must be withheld under section 552.130 of the Government Code. The Texas motor vehicle record information which pertains to the remaining involved individuals must be withheld from the insurance company under section 552.130.

In summary, the department must withhold the highlighted telephone number and address under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. With the exception of basic information, which you indicate you will release, the department may withhold incident report number 07-26887 under section 552.108(a)(1) of the Government Code. The department must withhold the highlighted Texas motor vehicle record information under section 552.130 of the Government Code. The requestor, however, may have a special right of access to the Texas motor vehicle record information belonging to his insured. The remaining information must be released to the requestor.<sup>1</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

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<sup>1</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.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

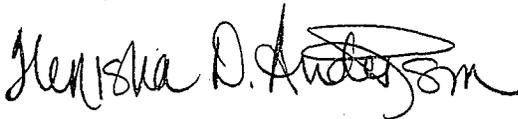
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Henisha D. Anderson  
Assistant Attorney General  
Open Records Division

HDA/mcf

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Enc. Submitted documents

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(w/o enclosures)