



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2008

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City Attorney's Office
1400 South Lamar
Dallas, Texas 75215

OR2008-02812

Dear Ms. Middlebrooks:

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# 303424.

The Dallas Police Department (the "department") received a request for a specified internal affairs report. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 exception encompasses information that other statutes make confidential. 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

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Code 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. We understand that the City of Dallas is part of an emergency communication district established under section 772.318 of the Health and Safety Code. You have marked a telephone number in the submitted information that the department seeks to withhold under section 772.318. To the extent that the telephone number in question was provided by a 911 service supplier, we agree that it must be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 also encompasses section 611.002 of the Health and Safety Code. Section 611.002 governs the public availability of mental health records and provides in part:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Health & Safety Code § 611.002. Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *Id.* § 611.001(b). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). We have marked the information that constitutes a mental health record that the department must withhold under section 611.002, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045.²

Next, you note that section 552.117 of the Government Code is applicable to a portion of the requested information. Section 552.117(a)(2) excepts from public disclosure a peace officer’s home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under sections 552.024 or 552.1175 of the Government Code.³ Gov’t Code § 552.117(a)(2); *see* Open Records Decision No. 622 (1994). Accordingly, the department must withhold the information you have marked under section 552.117(a)(2).

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator’s

²As our ruling is dispositive, we need not address your remaining argument for this information. However, we note that you cite to section 415.057 of the Government Code, which was repealed by the 76th Legislature. *See* Act of May 13, 1999, 76th Leg., R.S. ch. 388, § 6(b)(1), 1999 Tex. Gen. Laws 1431, 2440. Section 1701.306 of the Occupations Code is the current statute covering this type of information.

³“Peace officer” is defined by Article 2.12 of the Texas Code of Criminal Procedure.

license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We agree that the department must withhold the Texas motor vehicle record information you have marked under section 552.130.

Section 552.136(b) provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *See id.* § 552.136. You inform us that an employee's identification number is also used as an employee's credit union bank account number. Based upon this representation, we agree that the department must withhold the information you have marked under section 552.136 of the Government Code.

In summary, in conjunction with section 552.101, the department must withhold (1) the information you have marked under section 772.318 of the Health and Safety Code if this information was supplied by a 9-1-1 service supplier; and (2) the mental health record we have marked under section 611.002 of the Health and Safety Code, unless the requestor has a right of access to the information under sections 611.004 and 611.0045. The department must also withhold (1) the information you have marked under section 552.117(a)(2); (2) the information you have marked under section 552.130; and (3) the information you have marked under section 552.136. The remaining 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 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 303424

Enc. Submitted documents

c: Ms. Tanya Eiserer
Dallas Morning News
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(w/o enclosures)