



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 7, 2008

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2008-06192

Dear Ms. Byles:

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# 309542.

The City of Fort Worth (the "city") received a request for information relating to 911 calls concerning a fatal accident. You state that social security numbers will be redacted pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim that some of the remaining requested information is excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> We have considered the exception you claim and have reviewed the information you submitted.

We first note that the city did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) provides in part that a governmental body must submit a copy of the request for information to this office not later than the fifteenth business day

---

<sup>1</sup>Section 552.147(b) 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.

<sup>2</sup>We note that although the city also initially raised section 552.108 of the Government Code, you have since withdrawn your assertion of that exception. Accordingly, we do not address section 552.108.

after the date of its receipt of the request. *See* Gov't Code § 552.301(e)(1)(D). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. – Austin 1990, no writ). Thus, because the city did not timely provide this office with a copy of the instant request for information, the submitted information is presumed to be public under section 552.302. This statutory presumption can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The city's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure, and therefore we will address section 552.101.

Section 552.101 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 communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety 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 furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

We understand that the city is part of an emergency communications district established under section 772.218. You seek to withhold information relating to 911 calls. You inform us that the information in question was furnished by a 911 service supplier. Based on your representations and our review of the information at issue, we conclude that the city must withhold the telephone numbers of 911 callers that you have marked in the submitted documents under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. We also conclude, however, that the rest of the marked information that you seek to withhold on this basis, including information relating to a cellular telephone service provider, is not confidential under section 772.218 and may not be withheld under section 552.101. We have marked that information for release. We also note that any telephone numbers of 911 callers contained in the submitted recordings of 911 calls may not be withheld under section 552.101 in conjunction with section 772.218, because such information was furnished by the 911 callers themselves and not by a 911 service provider. *See* ORD 649 at 3 (language of confidentiality provision controls scope of its protection).

We note that section 552.130 of the Government Code is applicable to some of the remaining information. This section excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. See Gov't Code § 552.130(a)(1)-(2). You state that some of the remaining information will be redacted under section 552.130 on the basis of previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). See Open Records Decision No. 673 (2001) (previous determinations). We note that some of the information that you have marked for redaction does not fall within the scope of section 552.130 and must be released. We have marked that information. We also have marked additional Texas motor vehicle information that the city must withhold under section 552.130.

In summary: (1) the city must withhold the telephone numbers of 911 callers marked in the submitted documents under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code; and (2) except for the information that we have marked for release, the city must withhold the Texas driver's license and motor vehicle information that you have marked, as well as the additional Texas motor vehicle information that we have marked, under section 552.130 of the Government Code. The rest of 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 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,

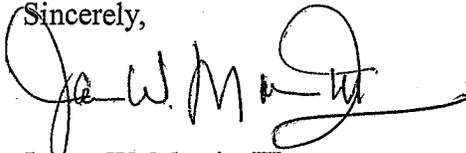
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/jh

Ref: ID# 309542

Enc: Submitted information

c: Mr. Scott Lewinter  
KDFW Fox 4 Television  
400 North Griffin Street  
Dallas, Texas 75202  
(w/o enclosures)