



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 23, 2009

Ms. Nicole B. Webster
Assistant City Attorney
City of Waco Legal Services
P.O. Box 2570
Waco, Texas 76702-2570

OR2009-10261

Dear Ms. Webster:

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# 349946 (Waco Reference # LGL-09-489).

The Waco Police Department (the "department") received a request for copies of all incident reports and 9-1-1 calls involving the requestor. You state you will release some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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. Section 552.101 encompasses information made confidential by other statutes. 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 are applicable to emergency 9-1-1 districts established in accordance with

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

chapter 772. *See* Open Records Decision No. 649 (1996). These sections make only the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You indicate the City of Waco is part of an emergency communication district established under section 772.318. You have marked telephone numbers and addresses in the submitted Computer Aided Dispatch (“CAD”) records you seek to withhold under section 772.318. We note portions of the marked addresses appears to be the cellular telephone tower nearest to the location of the incident. This address is not the originating address of the 9-1-1 caller, and, therefore, may not be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. We also note you have marked an intersection and an address described as the closest address to the incident at issue. These addresses are also not the originating addresses of a 9-1-1 caller, and, therefore, may not be withheld under section 552.101 of the Government Code in conjunction with section 772.318. Finally, we note you have marked multiple additional telephone numbers and addresses within the CAD records. It is unclear which of these telephone numbers and addresses are the originating telephone numbers and addresses provided by a 9-1-1 service supplier. Thus, you must only withhold from the submitted CAD records the originating telephone numbers and addresses supplied by a 9-1-1 service supplier under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. Any of the marked telephone numbers and addresses that are not an originating telephone number or address supplied by a 9-1-1 service provider may not be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Next, you raise section 552.108 of the Government Code for report numbers 07-2452 and 07-25108. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report numbers 07-2452 and 07-25108 relate to pending criminal investigations. However, we note incident report number 07-2452 relates to a misdemeanor charge of criminal mischief that occurred on January 31, 2007. The statute of limitations for the offense described in incident report number 07-2452 is two years. *See* Pen. Code § 28.03(b)(2) (criminal mischief offenses are Class B misdemeanors where pecuniary loss is 50 dollars or more but less than \$500); Crim. Proc. Code art. 12.02 (indictment for a misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward). With regard to incident report number 07-2452, you have neither informed this office any criminal charges were filed within the limitations period nor have you explained how release of the information would interfere with the detection,

investigation, or prosecution of an offense for which the statute of limitations has run. Thus, the department has not shown the applicability of section 552.108(a)(1) to incident report number 07-2452. However, based upon your representations and our review of incident report number 07-25108, we conclude 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).

As you acknowledge, 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*. See 531 S.W.2d at 186-88. Therefore, the department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). With the exception of basic information, the department may withhold the information related to report number 07-25108 under section 552.108(a)(1) 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(a)(1), (2). You have marked driver’s license numbers, vehicle identification numbers, and license plate numbers pursuant to this exception. We note some of the information you have marked belongs to the requestor. Section 552.130 protects personal privacy. Therefore, the requestor has a right of access to her own Texas motor vehicle record information under section 552.023 of the Government Code. See *id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the department must only withhold the information we have marked pursuant to section 552.130 of the Government Code.

Finally, we note you have marked social security numbers contained in the submitted information. The social security number of a living person is excepted from public disclosure under section 552.147 of the Government Code.² Gov’t Code § 552.147(a). The department may withhold the social security numbers you have marked pursuant to section 552.147 of the Government Code.

²We note 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.

In summary, the department must withhold from the submitted CAD records the marked telephone numbers and addresses that are the originating telephone numbers and addresses supplied by a 9-1-1 service supplier 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, the department may withhold the information related to report number 07-25108 under section 552.108(a)(1) of the Government Code. The department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The department may withhold the marked social security numbers under section 552.147 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/cc

Ref: ID# 349946

Enc. Submitted documents

c: Requestor
(w/o enclosures)