



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 28, 2009

Ms. Luz E. Sandoval-Walker  
Assistant City Attorney  
Office of the City Attorney  
The City of El Paso  
2 Civic Center Plaza, 9th Floor  
El Paso, Texas 79901

OR2009-12156

Dear Ms. Sandoval-Walker:

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# 355602.

The El Paso Police Department (the "department") received a request for 9-1-1 call reports and recordings related to a specified incident. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

As you acknowledge, the department did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. *See Gov't Code* § 552.301(b). The submitted information is therefore 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). The statutory presumption of publicness can generally be overcome when 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). You claim an exception to disclosure under section 552.108 of the Government Code, which is discretionary and may be waived. *See Gov't Code* § 552.007; *Open Records Decision Nos.* 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). In

acknowledging your failure to comply with section 552.301(b), you state that a third party's interests provide a compelling reason to withhold the submitted information from disclosure. However, the "third party" you mention is the department, which is the law enforcement entity that initially received the request and subsequently failed to comply with section 552.301(b). Thus, the department's own interests cannot provide a compelling reason to overcome the presumption of publicness. Therefore, the department may not withhold any of the submitted information under section 552.108. However, we will consider whether sections 552.101 and 552.130 of the Government Code provide a compelling reason to withhold any portion of the submitted information despite the department's procedural violation.<sup>1</sup>

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. Section 552.101 encompasses section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Section 772.318 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). We understand that the department is part of an emergency communication district established under section 772.318. Therefore, to the extent the telephone numbers and addresses we have marked are originating telephone numbers and addresses of 9-1-1 callers that were furnished by a 9-1-1 service provider, such telephone numbers and addresses are confidential under section 772.318 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. Similarly, the department must also withhold the same information to the extent it is contained in the submitted audio recordings. However, to the extent the department lacks the technological capability to redact this information from the submitted audio recordings, the department must withhold the submitted audio recordings in their entirety pursuant to section 552.101 in conjunction with section 772.318.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(2). The purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, Texas motor vehicle record information that pertains to a deceased individual may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enterprises Inc.*, 589 S.W.2d 489 (Tex. Civ. App.-Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976). Thus, to the extent a living person has an ownership interest in the vehicle to which the marked Texas motor vehicle information relates, the department

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

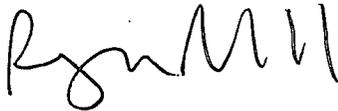
must withhold this information under section 552.130. Conversely, if no living person owns an interest in the vehicle at issue, the department must release the information marked under section 552.130. If the department withholds this information, it must also withhold the same information contained in the submitted audio recordings. However, to the extent the department lacks the technological capability to redact this information from the submitted audio recordings, the department must withhold the submitted audio recordings in their entirety pursuant to section 552.130.

As you raise no further exceptions against disclosure, the department must release the remainder of the submitted information.

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](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,



Ryan T. Mitchell  
Assistant Attorney General  
Open Records Division

RTM/rl

Ref: ID# 355602

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)