



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2009

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-16779

Dear Ms. Aguilar:

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# 362533.

The Corpus Christi Police Department (the "department") received a request for information pertaining to a specified incident. You claim that 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.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). Within fifteen days of receiving the request, the governmental body must submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). You inform us that the department received the request for information on September 4, 2009. Accordingly, the tenth business day after receiving the request was September 21, 2009. You did not request

a ruling until September 22, 2009. The fifteenth business day after receiving the request was September 28, 2009. You did not submit arguments or the requested information until September 29, 2009. Consequently, we find you have failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you claim an exception to disclosure under section 552.108 of the Government Code, that section is a discretionary exception that protects a governmental body's interests and which may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). In failing to comply with section 552.301, the department has waived its claim under section 552.108. Therefore, the department may not withhold any of the submitted information under section 552.108. However, sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome this presumption; therefore, we will consider whether these sections are applicable to the submitted information.

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 section encompasses information protected by other statutes. 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 9-1-1-service supplier. *See* Open Records Decision No. 649 (1996). You state that the City of Corpus Christi is within an emergency communication district that is subject to section 772.318. You seek to withhold the information marked "Address" and "Phone" in the submitted Event Information document under section 772.318. However, the information marked "Address" is the name of a road; it does not specify an address on that road. Because this information is not the originating address of the 9-1-1 caller, it is not confidential under section 772.318 and must be released. You claim the telephone number you have marked was furnished by the 9-1-1 service supplier. Based on your representations and our review, the marked telephone number is confidential under section 772.318 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.

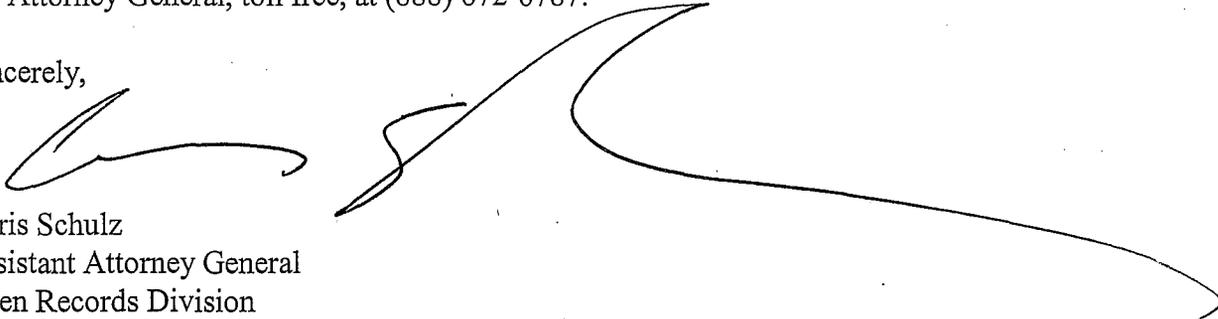
Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the information you have marked, and the additional information we have marked, pursuant to section 552.130.

In summary, the department must withhold the marked telephone number under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department must withhold the marked information under section 552.130 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, toll free, at (888) 672-6787.

Sincerely,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 362533

Enc. Submitted documents

cc: Requestor
(w/o enclosures)