



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 20, 2010

Ms. S. McClellan
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2010-00893

Dear Ms. McClellan:

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# 367528 (DPD Request No. 2009-9250).

The Dallas Police Department (the "department") received a request for "911 audio" involving a specified date, approximate time interval, street address, and complaint. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We first note that the requestor specifically seeks access to "911 audio." Thus, the submitted incident detail report is not responsive to this request for information. We also note that tracks 1, 3, 5, and 7 of the submitted audio CD appear to have been created after the department received this request. The Act does not require a governmental body to release information that did not exist when it received a request or create responsive information.¹ Thus, tracks 1, 3, 5, and 7 of the CD are not responsive to this request. This decision does not address the public availability of the non-responsive information, and the department need not release that information in response to this request.

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

¹ See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

confidential. You raise section 552.101 in conjunction with section 58.007 of the Family Code, which provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of Fam. Code tit. 3). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. You contend that all of the responsive information is confidential under section 58.007(c). On review of the information at issue, we conclude that tracks 2 and 4 of the submitted CD are records of an alleged offense involving a juvenile suspect that occurred on or after September 1, 1997. Therefore, the department must withhold tracks 2 and 4 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. We also conclude that the rest of the responsive information, which is contained in track 6 of the CD, does not consist of law enforcement records and files concerning a juvenile offender. Therefore, the information on track 6 is not confidential under section 58.007(c) and may not be withheld on that basis under section 552.101.

You also raise section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 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.

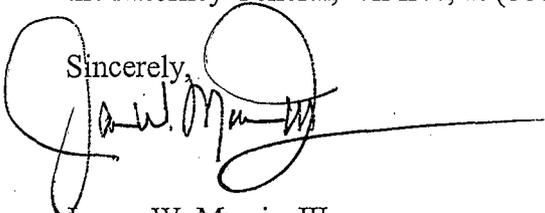
Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You seek to withhold a 911 caller's address and telephone number on the basis of that section. We understand that the City of Dallas is part of an emergency communication district established under that section. We note, however, that section 772.318 is applicable only to information furnished by a service supplier and does not encompass information obtained from 911 callers themselves. See ORD 649 at 3 (language of confidentiality provision controls scope of its protection). In this instance, the information on track 6 of the CD was obtained from the 911 caller herself. We therefore conclude that the department may not withhold any of the information on track 6 under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

In summary, the department must withhold tracks 2 and 4 of the submitted CD under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The rest of the responsive 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,



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

JWM/cc

Ref: ID# 367528

Enc: Submitted information

c: Requestor
(w/o enclosures)
