



June 25, 2001

Ms. Kelly B. Holder  
Support Services Supervisor  
City of New Braunfels - Police Department  
1488 South Seguin Avenue  
New Braunfels, Texas 78130-3853

OR2001-3235

Dear Ms. Holder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149886.

The New Braunfels Police Department (the "department") received a request for the 911 call log statement for an accident which occurred on April 21, 2001 on FM 306. You indicate that the requested information is excepted from disclosure under section 552.101 of the Government Code, as well as under section 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that the originating telephone numbers and addresses from the call list are confidential under chapter 772 of the Health and Safety Code. To the extent that portions of the information here involve an emergency 911 district established in accordance with chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts, the information may be confidential under chapter 772. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code make confidential the originating telephone

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<sup>1</sup>We note that you submitted to this office copies of the Texas Peace Officer's Accident report form which pertains to the accident that is the subject of this request. As this information is not responsive to the request, this ruling does not address the applicability of any of the raised exceptions to this information.

numbers and addresses of 911 callers furnished by a service supplier. *See* Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. *See* Health & Safety Code §§ 772.401, *et seq.* Thus, if the emergency communication district here is subject to section 772.118, 772.218 or 772.318, the originating telephone number and any address on the call list are protected from public disclosure under section 552.101 as information deemed confidential by statute.

Next, we address your argument under section 552.108. Section 552.108, the “law enforcement exception,” provides:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [public disclosure] if: (1) release of the internal record or notation would interfere with law enforcement or prosecution;

....

When section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would interfere with law enforcement. Open Records Decision No. 434 at 3 (1986). Whether disclosure of particular records will interfere with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). Where it can be established from an examination of the facts of a particular case that disclosure of witness identities and statements might subject the witnesses to possible intimidation or harassment, that information may be excepted from disclosure under section 552.108. Open Records Decision Nos. 611 (1992), 297 (1981), 252 (1980); *see also* Open Records Decision Nos. 169 (1977) and 123 (1976) (information protected by common law right of privacy if disclosure presents tangible physical danger). You argue that

those individuals who stopped at the accident scene on the morning of 4/21/2001 were asked by the officers to provide their names and phone numbers; they were given the opportunity to either provide their information,

or decline to “get involved.” However, those individuals who called 911 for the sole purpose of getting medical assistance for the injured, surely did so without any belief they would be called upon later by lawyers seeking information. It is our great concern that if witnesses such as this come to know that their names, addresses and phone numbers will be readily available to every requestor seeking information, they will perhaps be hesitant to make that initial call for help in the future.

After due consideration of your comments and our review of the submitted information, we conclude that you have not established that release of the witness identities and statements in this case would subject the witnesses to possible intimidation or harassment. Therefore, the requested information may not be withheld under section 552.108(a)(1) or section 552.108(b)(1) of the Government Code.

To summarize, if the emergency communication district here is subject to section 772.118, 772.218 or 772.318 of the Health and Safety Code, the originating telephone number and any address on the call list, but not witness names and statements, are protected from public disclosure under section 552.101 as information deemed confidential by statute. If the emergency communication district here is not subject to section 772.118, 772.218 or 772.318, then the originating telephone number and address, as well as witness names and statements, must be released to the requestor, as we find that this information is not protected under section 552.108.

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 appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public 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 General Services Commission 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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref.: ID# 149886

Enc.: Submitted documents

c: Ms. Jenny Mendoza, Case Manager  
Wayne Wright, L.L.P.  
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(w/o enclosures)