



April 12, 2002

Mr. Richard D. Hughes
City Attorney
City of Nederland
P.O. Box 967
Nederland, Texas 77627

OR2002-1833

Dear Mr. Hughes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160552.

The City of Nederland Police Department (the "city") received a request for its daily dispatch logs. You state that the city has released some of the requested information. You claim that the remaining information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

Initially, we must consider whether the city complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information may be withheld from public disclosure. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10th business day after the date of receiving the written request." Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

You state that the city received this request for information on October 22, 2001. You inform us that on October 26, 2001, the city asked the requestor to clarify or narrow the scope of the request. You state that the city received a written response from the requestor's attorney on January 8, 2002. The city submitted its request for a decision to this office on January 22, 2002. Section 552.222 of the Government Code provides in part that "[i]f what information is requested is unclear to a governmental body, the governmental body may ask

the requestor to clarify the request.” Gov’t Code § 552.222(b). This section further provides that “[i]f a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed, but the governmental body may not inquire into the purpose for which information will be used.” *Id.* However, communications between a governmental body and a requestor to clarify or narrow a request for information merely toll the ten-business-day deadline under section 552.301(b) to request an attorney general decision. *See* Open Records Decision No. 663 at 2-5 (1999) (addressing circumstances under which governmental body’s communications with a requestor to clarify or narrow a request for information will toll ten-business-day deadline under section 552.304(b)). The conclusion of these communications does not trigger a new ten-business-day period under section 552.301(b) in which to request a decision. *Id.*

In this instance, the city’s ten business days under section 552.301(b) began when the city received this request for information on October 22, 2001. Four business days elapsed between the city’s receipt of the request on October 22 and its letter to the requestor dated October 26, 2001. Therefore, the city had only six additional business days from the date of its receipt of clarification in which to submit its request for decision under section 552.301(b). The city allowed an additional nine business days to elapse between its receipt of written clarification on January 8, 2002 and its request for this decision on January 22, 2002.¹ Thus, the city failed to request this decision within the ten business days prescribed by section 552.301(b). Therefore, the information at issue is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of this information from disclosure. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or that third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). In this instance, the city raises section 552.101 of the Government Code. As this exception can provide a compelling reason for non-disclosure, we will consider your arguments.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that another statute makes confidential. The city raises 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 communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make the originating telephone

¹This assumes that January 21, 2002 (Martin Luther King, Jr., Day) was not a business day for the city.

numbers and addresses of 9-1-1 callers that are 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 claim that responsive addresses and telephone numbers that relate to 9-1-1 calls are confidential under section 772.318. You do not state, however, whether the city is part of an emergency communication district established under this section. We therefore conclude that if the city is part of an emergency communication district under section 772.318 of the Health and Safety Code, then the addresses and telephone numbers of 9-1-1 callers furnished by a service supplier are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 772.318. If the city is not part of an emergency communication district under this section, then the information relating to 9-1-1 callers must be released.

The city also raises section 552.101 in conjunction with section 550.065 of the Transportation Code. Section 550.065 provides in pertinent part:

(a) This section applies only to information that is held by [the Texas Department of Public Safety] or another governmental entity and relates to a motor vehicle accident reported under this chapter or Section 601.004 [of the Transportation Code].

(b) Except as provided by Subsection (c), the information is privileged and for confidential use of:

(1) the [Texas Department of Public Safety]; and

(2) an agency of the United States, this state, or a local government of this state that has use for the information for accident prevention purposes.

Transp. Code § 550.065(a)-(b). You state that the city has withheld information contained in responsive Call for Service (“CFS”) records that pertains to motor vehicle accidents. You assert that this information is confidential under section 550.065 if it relates to an accident that was reported under chapter 550 of the Transportation Code. *See id.* § 550.065 (officer’s accident report).

We disagree. Initially, we note that as amended by the Seventy-fifth Legislature in section 13 of Senate Bill No. 1069, section 550.065(a) previously provided as follows:

(a) This section applies only to information that is held by the [Texas Department of Public Safety] or another governmental entity and relates to a motor vehicle accident, including:

- (1) information reported under this chapter, Section 601.004, or Chapter 772, Health and Safety Code;
- (2) information contained in a dispatch log, towing record, or a record of a 9-1-1 service provider; and
- (3) the part of any other record that includes information relating to the date of the accident, the name of any person involved in the accident, or the specific location of the accident.

See Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 13, 1997 Tex. Gen. Laws 4575, 4582. The prior version of section 550.065 was held to be unconstitutional, however, and its enforcement was permanently enjoined. See *Texas Daily Newspaper Ass'n v. Cornyn*, No. 97-08930 (345th Dist. Ct., Travis County, Tex.) (Final Judgment and Permanent Injunction entered January 24, 2001). Among other things, the court concluded that the prior version of section 550.065 "impose[d] a wholesale ban on information that has traditionally been public[.]" See *id.* (Findings of Fact and Conclusions of Law entered January 24, 2001).

The Seventy-seventh Legislature enacted the present language of section 550.065(a) in House Bill No. 1544. See Act of May 25, 2001, 77th Leg., R.S., ch. 1032, § 5, 2001 Tex. Gen. Laws 2281, 2282. The legislative history of House Bill No. 1544 reflects that the legislature intended to correct the deficiencies that caused the court to invalidate the previous version of the statute. See Open Records Decision No. 643 at 2 (1996) (citing *Acker v. Texas Water Comm'n*, 790 S.W.2d 299 (Tex. 1990)) (legislature is presumed to have enacted a statute with complete knowledge of and reference to existing law). Furthermore, there is no legislative indication that present section 550.065 was intended to encompass any records other than those prepared in accordance with chapter 550 or section 601.004 of the Transportation Code. See Open Records Decision No. 643 at 2-3 (citing *Buckner Glass & Mirror, Inc. v. T.A. Pritchard Co.*, 697 S.W.2d 712 (Tex. App.--Corpus Christi 1985, no writ) (when legislature amends a law, it is presumed to have intended to change the law). Accordingly, we conclude that the accident information contained in the submitted CFS records is not made confidential by section 550.065 and thus is not excepted from disclosure under section 552.101 of the Government Code.

We note, however, that the information that the city has withheld includes license plate numbers. 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). It is not clear to this office whether the license plate numbers in

question were issued by an agency of this state. To the extent, however, that these are Texas license plate numbers, they must be withheld from disclosure under section 552.130.

In summary, the addresses and telephone numbers of 9-1-1 callers furnished by a service supplier must be withheld under section 552.101 of the Government Code if the city is part of an emergency communications district established under section 772.318 of the Health and Safety Code. The city must withhold Texas license plate numbers under section 552.130 of the Government Code. The rest of the requested information must be released.

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).

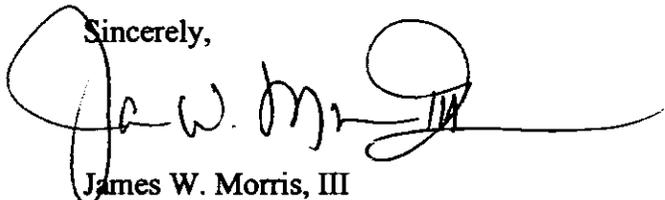
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "W".

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

JWM/sdk

Ref: ID# 160552

Enc: Submitted documents

c: Mr. Chris Byers, D.C.
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(w/o enclosures)