



August 5, 2002

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR2002-4275

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166895.

The City of Longview (the "city") received a request for "copies of call sheets, incident reports, activity reports and requests for services" regarding two specific addresses from October 1, 2001, to April 29, 2002. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin by addressing your arguments in favor of withholding the submitted EMS reports. You first contend that the submitted EMS reports are excepted from disclosure under section 552.103 of the Government Code. However, as completed reports, the EMS reports may only be withheld from disclosure if they are excepted from disclosure under section 552.108 of the Government Code or are confidential under other law. Gov't Code § 552.022(a)(1). You do not contend that the submitted EMS reports are excepted from disclosure under section 552.108. Furthermore, section 552.103 is not "other law" for the purpose of section 552.022. Open Records Decision No. 663 (1999) (governmental body may waive section 552.103). Therefore, the EMS reports may not be withheld under section 552.103 of the Government Code.

Nevertheless, you also contend that the EMS reports are confidential under section 773.091 of the Health and Safety Code. Section 773.091 provides:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

This confidentiality “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.” *Id.* § 773.091(g). It does not appear that any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code apply in this instance. Accordingly, the city must withhold the submitted EMS records under section 552.101 of the Government Code,¹ except for information required to be released under section 773.091(g).

Next, we turn to your argument that the submitted accident reports are likewise excepted from disclosure under section 552.101. You claim that accident reports contained in the file are confidential under section 550.065(b) of the Transportation Code. Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 1544, § 5 (to be codified at Transp. Code § 550.065(c)(4)). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the city with two of the three pieces of information necessary to obtain any of the submitted accident reports. Thus, the city must withhold the accident reports under section 550.065(b).

You also contend that portions of submitted call sheets are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. In Open Records Decision No. 649 (1996), which interpreted section 772.318 of the Health and Safety Code, we examined several confidentiality provisions in chapter 772 of the Health and Safety Code. To the extent that the portions of the information containing the highlighted telephone numbers and addresses involve an emergency 9-1-1 district established in accordance with chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts, the

¹Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes.

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 numbers and addresses of 9-1-1 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 9-1-1 telephone numbers and addresses. *See* Health & Safety Code §§ 772.401, *et seq.* Thus, if the telephone numbers and addresses you have marked in the submitted call sheets were provided to an emergency communication district subject to section 772.118, 772.218, or 772.318 by a service supplier, the originating telephone numbers and addresses are protected from public disclosure under section 552.101 as information deemed confidential by statute. However, if the telephone numbers and addresses were not provided by a 9-1-1 service supplier to an emergency communication district subject to section 772.118, 772.218, or 772.318, the addresses and telephone numbers must be released.

In addition, you argue that a portion of the submitted information consists of confidential criminal history information. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. The information at issue is CHRI generated by TCIC. Accordingly, the information, which we have marked, is excepted from required public disclosure by section 552.101 of the Government Code.

Next, we address your contention that portions of submitted police reports and related call sheets are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted police reports and related call sheets relate to pending criminal cases. Based upon this representation, we conclude that the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov’t Code § 552.108(c); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, including the social security number of an arrested individual, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov’t Code § 552.007.

Finally, you contend that portions of the submitted police reports and call sheets are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

To the extent the license plate information you have marked relates to a license plate issued by an agency of the State of Texas, we agree that the city must withhold the license plate

information under section 552.130. However, to the extent the license plate information you have marked does not relate to a license plate issued by an agency of the State of Texas, the city must release the information.

In summary, except for information required to be released under section 773.091(g), the submitted EMS reports must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. The submitted peace officer accident reports must be withheld under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code. The telephone numbers and addresses you have marked in the submitted call sheets must be withheld under section 552.101 of the Government Code if the numbers and addresses were provided to an emergency communication district subject to section 772.118, 772.218, or 772.318 by a service supplier. The CHRI, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with chapter 411, subchapter F of the Government Code. The city may withhold the information you have marked under section 552.108, except for front page offense report information. Finally, the city must withhold the license plate information you have marked under section 552.130 to the extent that the corresponding license plates were issued by an agency of the State of Texas. The city must release the remainder of the submitted information.

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); *Tex. Dep't of Pub. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 166895

Enc: Submitted documents

c: Mr. John Lynch
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(w/o enclosures)