ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 4, 2003

Mr. Joel K.B. Winful
County of Dallas
411 Elm Street, Suite 500
Dallas, Texas 75202

OR2003-7934

Dear Mr. Winful:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190535.

Dallas County (the "county") received three requests from the same requestor for access to or copies of seven categories of information pertaining to the quarantine of the individual suspected of having contracted Severe Acute Respiratory Syndrome ("SARS"). You have presented arguments to this office seeking to withhold information responsive to two of the categories:

> The fingerprints and photo taken of the suspected SARS patient by the Dallas County Sheriff's Office before his or her release [and]
>
> Cell phone records for the month of June for any cell phone paid for or partially reimbursed by the county and issued to Betty Culbreath-Lister, Sheriff Jim Bowles, Jane Ferguson and Amanda McKeen Simpson.

You have not presented arguments with regard to the remaining categories of information. Therefore, we presume you have released any other responsive information to the requestor. If you have not, you must do so at this time. *See* Gov't Code §§ 552.301, .302. You claim that portions of the submitted information are excepted from disclosure under sections

552.101, 552.108, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.[1]

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information that is protected from disclosure by other statutes. You argue that the requested photograph and fingerprints may not be released pursuant to section 81.046 of the Health and Safety Code. Section 81.046 provides in pertinent part:

> (a) Reports, records, and information furnished to a health authority or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.
>
> (b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsection (c) and (d).

Health & Safety Code § 81.046(a), (b). In Open Records Decision No. 577 (1990), this office concluded that any information acquired or created during an investigation under chapter 81 is confidential and may not be released unless an exception set out in the statute applies. You claim that the requested photograph and fingerprints relate to an investigation conducted under chapter 81 and that section 81.046 prohibits the release of the information at issue. Based on your representations and our review of the information at issue, we find that the information in its entirety falls within the scope of section 81.046. You also represent that none of the release provisions of section 81.046 apply in this instance. Accordingly, we conclude that the county must withhold the requested photograph and fingerprints pursuant to section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.

Section 552.108(b)(1) of the Government Code excepts from public disclosure an internal record of a law-enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a

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[1] We note that you have submitted a representative sample of the cellular telephone records. We assume that the "representative sample" of records submitted to this office as responsive to that category of the request is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To claim this aspect of section 552.108, however, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

This office has previously determined that the cellular telephone numbers assigned to county officials and employees with specific law enforcement responsibilities are excepted from required public disclosure pursuant to section 552.108. *See* Open Records Decision No. 506 (1988) (applying predecessor statute). After considering your arguments, we conclude that you have demonstrated that the cellular telephone number assigned to the sheriff may be withheld from the requestor pursuant to section 552.108(b)(1).

You argue that portions of the submitted information may be confidential under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure information that reveals a peace officer's home address, home telephone number, social security number, and whether the officer has family members.[2] To the extent the information contains the home telephone number of a peace officer, you must withhold such information under section 552.117(a)(2). To the extent the information contains the home telephone number of a current or former employee who does not meet the definition of "peace officer," the information is not confidential under section 552.117(a)(2), but may be confidential under section 552.117(a)(1) as outlined below.

Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the county may not withhold an employee's personal information under section 552.117 if the employee did not make a request for confidentiality under section 552.024 of the Government Code prior to the date on which the request for this information was received. If the employee complied with section 552.024, the county must withhold the employee's home telephone number, to the extent it appears in the submitted information, under section 552.117(1).

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[2]"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

We note that the submitted cellular telephone bills contain account numbers. Section 552.136 of the Government Code makes certain account numbers confidential and provides in relevant part:

> (a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:
>
> > (1) obtain money, goods, services, or another thing of value; or
> >
> > (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.
>
> (b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We therefore conclude that the county must withhold the account numbers in the submitted records, which you have marked, pursuant to section 552.136 of the Government Code.

Finally we note that the cellular telephone records are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, you must withhold the requested photograph and fingerprints under section 552.101 of the Government Code in conjunction with 81.046 of the Health and Safety Code. You may withhold the cellular telephone number assigned to the sheriff under section 552.108(b)(1). To the extent the information contains the home telephone number of a licensed peace officer, it must be withheld under section 552.117(a)(2). To the extent the information contains the home telephone number of a current or former employee who has made a timely election under section 552.024, it must be withheld under section 552.117(a)(1). You must withhold the account numbers you have marked under section 552.136. The remaining information must be released to the requestor in compliance with federal copyright law.

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).

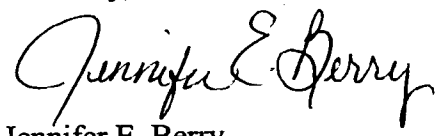
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 190535

Enc: Submitted documents

c: Ms. Terri Langford
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(w/o enclosures)