



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 23, 2004

Mr. G. Chadwick Weaver
First Assistant City Attorney
City of Midland
P.o. Box 1152
Midland, Texas 79702-1152

OR2004-1298

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196508.

The City of Midland (the "city") received a request for information pertaining to a particular drowning. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the information submitted as Exhibits B, C, and D is subject to a previous ruling from this office. In Open Records Letter No. 2003-7563 (2003), we considered a request that the city received for information regarding this same incident. You inform us that "OR2003-7563 is in response to a request for the same information which is subject to the present request." You make essentially the same arguments and representations with respect to this information as you did in the prior ruling request. We thus understand you to represent that the facts and circumstances surrounding that ruling have not changed. Therefore, the city may rely on Open Records Letter No. 2003-7563 as a previous determination for the information submitted as Exhibits B, C, and D. *See* Open Records Decision No. 673 at 6-7 (2001) (previous determination exists where requested information is precisely same information addressed in prior attorney general ruling, ruling is addressed to same governmental body, ruling concludes that information is or is not excepted from disclosure, and law, facts, and circumstances on which ruling was based have not changed).

We turn now to Exhibit E, which is not subject to a prior ruling from this office. You assert that some of this information is confidential by law. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and incorporates the confidentiality provisions found in chapter 772 of the Health and Safety Code. Chapter 772 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 confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *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.

We understand you to assert that Exhibit E may not be released to the extent it contains the originating telephone numbers and addresses of 9-1-1 callers because such information is confidential under chapter 772. To the extent the originating telephone numbers and addresses of 9-1-1 callers were supplied by a 9-1-1 service supplier to a 9-1-1 district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code, the telephone numbers and addresses must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by statute. However, if the telephone numbers and addresses were not provided by a 9-1-1 service supplier to a 9-1-1 district subject to section 772.118, 772.218, or 772.318, the telephone numbers and addresses must be released.

In summary, the city may continue to rely on Open Records Ruling No. 2003-7563 with respect to the information submitted as Exhibits B, C, and D. The telephone numbers and addresses of 9-1-1 callers contained in Exhibit E must be withheld under section 552.101 to the extent they were supplied by a 9-1-1 service supplier to a 9-1-1 district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code. The remainder of Exhibit E must be released. As our ruling on these issues is dispositive, we need not address your remaining arguments.

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).

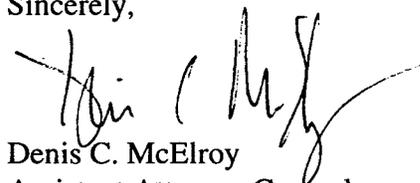
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 196508

Enc. Submitted documents

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