



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 15, 2004

Ms. Meredith Ladd  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Ste 800  
Richardson, Texas 75081

OR2004-9649

Dear Ms. Ladd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 212950.

The McKinney Police Department (the "department") received two requests from the same requestor for all reports regarding four different addresses on specified dates or during specified time periods. The requestor also seeks a copy or transcription of the audio tape from two specified 911 calls. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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 section encompasses information other statutes make confidential. You assert that Exhibit B-1 is confidential Section 261.201 of the Family Code, which reads in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

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<sup>1</sup>We assume that the representative sample of records submitted to this office 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.

purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We conclude that the information submitted as Exhibit B-1 consists of reports, records, or working papers used or developed in an investigation made under chapter 261 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the information submitted as Exhibit B-1 is confidential in its entirety pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the department must withhold this information under section 552.101 of the Government Code.<sup>2</sup>

We now turn to your arguments for Exhibits B-2 and B-3. Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain 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 information submitted as Exhibit B-2 relates to a case that is open and pending. Based upon this representation and our review of the submitted information, we conclude that the release of Exhibit B-2 would interfere with the detection, investigation, or prosecution of crime, and therefore, that section 552.108(a)(1) is applicable to this information. *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).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final

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<sup>2</sup>We note, however, that if the Texas Department of Family and Protective Services has created a file on this incident, the child’s parent(s) may have a statutory right to review the file. *See* Fam. Code § 261.201(g).

result other than a conviction or deferred adjudication. You state that the information submitted as Exhibit B-3 relates to closed investigations in which no further action will be taken, and that these investigations ended in a result other than conviction or deferred adjudication. Based upon these representations and our review, we agree that section 552.108(a)(2) is applicable to Exhibit B-3.<sup>3</sup>

We note, however, that section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 185. Thus, with the exception of the basic front page offense and arrest information, you may withhold Exhibits B-2 and B-3 under section 552.108. We note that you have the discretion to release all or part of the remaining information in Exhibits B-2 and B-3 that is not otherwise confidential by law. Gov't Code § 552.007.

Finally, you assert that the telephone numbers and addresses contained in 911 logs submitted as Exhibit B-4 are confidential pursuant to 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 911 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 911 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. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. Health & Safety Code §§ 772.401 *et seq.* Therefore, if the submitted calls for service involve an emergency communication district subject to section 772.118, 772.218, or 772.318, and the phone numbers and addresses within these documents were furnished by a service supplier, we agree that the caller's phone number and address are excepted from public disclosure based on section 552.101 of the Government Code as information deemed confidential by statute. The remaining information within Exhibit B-4, however, must be released to the requestor.

In summary, we conclude (1) Exhibit B-1 must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, (2) Exhibits B-2 and B-3 are excepted under section 552.108, except that basic information from each report must be released pursuant to section 552.108(c), and (3) if the submitted calls for service involve an emergency communication district subject to section 772.118, 772.218,

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<sup>3</sup>Because we reach this conclusion, we need not address your other argument for this information.

or 772.318, and the phone numbers and addresses within Exhibit B-4 were furnished by a service supplier, we agree that the caller's phone number and address are excepted from public disclosure based on section 552.101 of the Government Code as information deemed confidential by statute. The remaining 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 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,

A handwritten signature in black ink, appearing to read "Sarah Swanson", with a long horizontal flourish extending to the right.

Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/krl

Ref: ID# 212950

Enc. Submitted documents

c: Mr. J. Neal Prevost  
Prevost & Shaff  
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(w/o enclosures)