ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2005

Ms. M. Ann Montgomery
Assistant County and District Attorney
Ellis County and District Attorney's Office
1201 North Hwy 77, Suite B
Waxahachie, Texas 75165-5140

OR2005-00250

Dear Ms. Montgomery:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 216703.

The Ellis County Sheriff's Office (the "sheriff") received a request for complaints regarding a named individual's dogs. You state that you have provided the requestor with a portion of the requested information, but claim that the remaining 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 information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information that another statute makes confidential. Gov't Code § 552.101. Chapter 772 of the Health and Safety Code makes the originating telephone numbers and addresses of certain 9-1-1 calls confidential. This chapter 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. You contend that the originating addresses and telephone numbers of

9-1-1 callers that are contained in the submitted call sheets are confidential under chapter 772. To the extent the originating addresses and telephone numbers 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 addresses and telephone numbers must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by statute. However, if the addresses and telephone numbers 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 addresses and telephone numbers may not be withheld on this basis and, as you claim no other exception for them, they must be released.

We turn now to your argument under section 552.108 of the Government Code for the remaining information at issue. Section 552.108(a)(2) excepts from disclosure information concerning a criminal investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). 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 result other than a conviction or deferred adjudication. You inform us that the remaining information at issue pertains to investigations that did not result in conviction or deferred adjudication. Based on your representations and our review of the remaining submitted information, we agree that section 552.108(a)(2) is applicable. Accordingly, you may withhold the information you have marked from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, to the extent the originating addresses and telephone numbers of 9-1-1 callers in the submitted call sheets 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 addresses and telephone numbers must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by statute. However, if this information was 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 information must be released. The remaining information at issue may be withheld pursuant to section 552.108(a)(2) of the Government Code.

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).

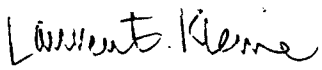
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 216703

Enc. Submitted documents

c: Ms. Kay Sikes
308 Hilltop Drive
Ennis, Texas 75119
(w/o enclosures)