



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 19, 2005

Mr. Darrell G-M Noga  
Fee, Smith, Sharp & Vitullo, LLP  
Three Galleria Tower  
13155 Noel Road, Suite 1000  
Dallas, Texas 75240

OR2005-09501

Dear Mr. Noga:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 234653.

The City of Coppell (the "city"), which you represent, received a request for information pertaining to thefts and burglaries of homes and businesses over a specified time period. You inform us that you will release responsive front page offense report information to the requestor. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.130 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses chapter 772 of the Health and Safety Code, which makes the originating telephone numbers and addresses of

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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.

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 a “vast majority of the telephone number references on the [submitted information] have come through the 9-1-1 emergency communication system” and are confidential under chapter 772. However, you claim that it is “not technically feasible, nor viable...to investigate so as to confirm if any of the phone numbers did not originate via a 9-1-1 emergency communications call.” Although the telephone numbers may “have come through the 9-1-1 emergency communication system,” the telephone numbers in the reports may have been provided by the callers themselves and not provided by the 9-1-1 service supplier. In addition, we note that you have not explained in what type of emergency communication district the city is located. To the extent the originating 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 originating telephone numbers must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by statute. However, if the 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 originating telephone numbers may not be withheld on this basis. Furthermore, the reports contain a suspect’s home telephone number. This phone number is not the originating telephone number of a 9-1-1 call and may not be withheld under chapter 772.

Section 552.101 also encompasses section 182.052 of the Utility Code, which provides as follows:

Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer’s account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, if the customer requests that the government-operated utility keep the information confidential.

Util. Code § 182.052(a). Section 182.052, by its own terms, applies only to personal information in a utility customer’s account record. The submitted records are incident reports and not utility customers’ account records. Therefore, none of the submitted information is confidential under section 182.052.

Section 552.101 also encompasses common law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor does not ask for the criminal history information concerning a certain person. Therefore, an individual's right to privacy has not been implicated and you may not withhold this information on that basis.

Section 552.117(a)(1) of the Government Code 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 timely elect to keep this information confidential pursuant to section 552.024. However, section 552.117 only applies to employment records. The submitted incident reports are not subject to section 552.117. Therefore, the city may not withhold this information pursuant to this section.<sup>2</sup>

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the city must withhold the Texas motor vehicle record information we have marked in the submitted documents.

In addition, we note that the submitted information contains social security numbers. Section 552.147 of the Government Code<sup>3</sup> provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the city must withhold the social security numbers marked in the submitted information under section 552.147.<sup>4</sup>

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<sup>2</sup>You inform us that you "cannot tell without further extensive investigation as to whether the prohibitions of disclosure of phone numbers for governmental employees and former governmental employees as referenced in Section 552.117 of the Texas Government Code also apply." Pursuant to section 552.301 of the Government Code, the governmental body has the duty to investigate and determine the applicability of an exception. Further, the difficulty of complying with the Act does not determine the availability of information, Open Records Decision Nos. 499, 497 (1988), nor does the Act excuse a failure to comply with the Act on the basis that compliance would be inconvenient or difficult. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

<sup>3</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

<sup>4</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary, to the extent the originating 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 originating telephone numbers must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by statute. The city must withhold the Texas motor vehicle record information under section 552.130 and the social security numbers under section 552.147. 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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 'Jaime L. Flores', written in a cursive style.

Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/jpa

Ref: ID# 234653

Enc. Submitted documents

c: Mr. Dan McIntyre  
6255 W. Northwest Highway, #111  
Dallas, Texas 75225  
(w/o enclosures)