ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2005

Ms. Beverly West Stephens
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2005-09505

Dear Ms. Stephens:

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# 234594.

The San Antonio Police Department (the "department ") received a request for a copy of a 9-1-1 recording pertaining to a specified incident. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). The copy of the written request for information that the department received bears a stamp indicating it was received on July 28, 2005. Your request for a decision bears a post office cancellation mark of August 15, 2005. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, you failed to comply with section 552.301. The department's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). In order to overcome this presumption, the

department must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. Since the applicability of sections 552.101 and 552.130 can provide compelling reasons to withhold information from disclosure, we will address your arguments.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 552.101 encompasses section 730.004 of the Transportation Code, which provides:

> Notwithstanding any other provisions of law to the contrary, including chapter 552, Government Code, except as provided by Sections 730.005 - 730.008, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

Transp. Code § 730.004. Section 730.003 provides that, for purposes of chapter 730 of the Transportation Code:

> (1) "Agency" includes any agency or political subdivision of this state, or an authorized agent or contractor of an agency of this state, that compiles or maintains motor vehicle records.
>
> . . .
>
> (4) "Motor vehicle record" means a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document. The term does not include:
>
> > (A) a record that pertains to a motor carrier; or
> >
> > (B) an accident report prepared under Chapter 550 or 601.

Transp. Code § 730.003(1), (4). Section 730.004 only applies to an "agency" that compiles or maintains motor vehicle records. *See* Transp. Code § 730.003(1). We do not believe that the department compiles or maintains motor vehicle records and, therefore, section 730.004 does not apply to the department. Accordingly, none of the requested information may be withheld under section 552.101 in conjunction with section 730.004 of the Transportation Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

Section 552.130 of the Government Code provides in pertinent part:

> (a) Information is excepted from the requirements of Section 552.021 if the information relates to:
>
> > (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
> >
> > (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Upon review, we find that the submitted information does not include Texas-issued motor vehicle record information. Therefore, none of the submitted information may be withheld on this basis. Because you raise no other exceptions, the requested information must be released to the requestor.

We note that a portion of the submitted recording is inaudible. Thus, because it is not possible for this office to review the inaudible portions of the submitted recording, we have no means of determining whether it contains any information that is confidential under section 552.101 or section 552.130. We therefore have no choice but to order the inaudible information released pursuant to section 552.302. If you believe that this information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

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

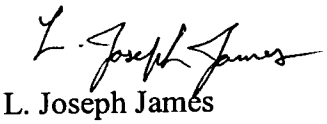
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 234594

Enc. Submitted documents

c: Mr. Luis Muela
9127 Mirecourt
San Antonio, Texas 78250
(w/o enclosures)