



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 24, 2006

Mr. Ernesto Rodriguez  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2006-05476

Dear Mr. Rodriguez:

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# 249905.

The City of El Paso (the "city") received a request for all information pertaining to incidents at two specific locations from May 2001 to the present. You state that you will provide the requestor with portions of the requested information, including the submitted complaint affidavits, upon payment, but claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes a Magistrate's Order of Emergency Protection. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless it is confidential under other law. *See* Gov't Code § 552.022(a)(17), *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992) (documents filed with court are public documents and must be released). Although you raise section 552.108 of the Government Code for this information, section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body; as such, it does not constitute other law for purposes of section 552.022. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the submitted order must be

released to the requestor if it has been filed with a court. In the event the submitted order has not been filed with a court, we address your arguments for withholding it as well as the remaining submitted information.

Section 552.101 of the Government Code 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. You claim that Exhibit D contains information protected by 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. You indicate that the emergency communication district here was established under section 772.318. You further indicate that the telephone numbers and addresses in Exhibit D were furnished by a service supplier. Based on your representations, we agree the city must withhold the originating telephone numbers and addresses in Exhibit D, which you have marked, under section 552.101 in conjunction with 772.318 of the Health and Safety Code.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). 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), 301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information in Exhibit B relates to pending criminal prosecutions. Based upon this representation, we conclude that the release of the information in Exhibit B would interfere with the detection, investigation, or prosecution of crime. 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).

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d 177. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic front page information, you may withhold the information at issue from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

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(a)(1), (2). Thus, the city must withhold the Texas license plate numbers and motor vehicle record information we have marked in Exhibit D under section 552.130.

Finally, we note that an arrestee’s social security number is confidential pursuant to section 552.147 of the Government Code, which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147. Accordingly, the city must withhold the social security number of the arrestee in Exhibit B pursuant to section 552.147 of the Government Code

In summary, if the submitted Magistrate’s Order of Emergency Protection has been filed with a court, it must be released. The originating telephone numbers and addresses of 911 callers, which you have marked in Exhibit D, furnished by a 911 service supplier must be withheld under section 552.101 in conjunction with section 772.118 of the Health and Safety Code. In addition, the city must withhold the marked Texas license plate numbers and motor vehicle record information under section 552.130 of the Government Code and the marked arrestee’s social security number in Exhibit B under section 552.147 of the Government Code. 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,



Anne Prentice  
Assistant Attorney General  
Open Records Division

AP/sdk

Ref: ID# 249905

Enc. Submitted documents

c: Mr. Hector Lopez  
9357 San Lorenzo  
El Paso, Texas 79907  
(w/o enclosures)