



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 28, 2006

Mr. Ernesto Rodriguez  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901-1196

OR2006-06916

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# 253156.

The City of El Paso (the "city") received a request for information pertaining to a specified automobile accident. You state that the city will release the "#1 Complaint Report[,] complaint affidavit, copies of the 911 transcripts and tapes, and the ST-3 accident report form.<sup>1</sup> You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses chapter 772 of the Health and Safety Code, which 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

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<sup>1</sup>Section 550.065(c)(4) of the Transportation Code provides for the release of ST-3 accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). In this case, the requestor has provided the requisite pieces of information specified by the statute.

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. These sections only protect the originating addresses and telephone numbers of individuals who actually called 9-1-1. In this instance, we know that the city is located in El Paso County, which has a population of more than 20,000 but less than 860,000. Accordingly, we will address your claims under section 772.318.

You state that the telephone number you have marked in Exhibit D is the originating telephone number of a 9-1-1 caller and was supplied by a 9-1-1 service supplier to a 9-1-1 district that is subject to section 772.318 of the Health and Safety Code. Accordingly, the telephone number you have marked in Exhibit D must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by statute.

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091. Subsection 773.091(g) provides, however, that this confidentiality “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.” *Id.* § 773.091(g).

You contend, and we agree, that the records submitted as Exhibit E are records of the identity, evaluation, or treatment of a patient by emergency medical services personnel. You state that the city has not received the proper written consent regarding the release of these records. *See id.* § 773.093 (listing elements of consent for release of EMS records). Thus, with the exception of the information subject to section 773.091(g), the city must withhold Exhibit E under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

Section 552.108 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)(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 id.* §§ 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 Exhibits B and C pertain to an ongoing criminal investigation. Based upon this representation, we conclude that with the exception of the records you will release to the requestor, the release of Exhibits B and C 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 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*. *See* 531 S.W.2d at 186-87. Thus, the city must release basic information from Exhibit B. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*).

We note that Exhibit B contains the arrestee’s social security number. Section 552.147 of the Government Code 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 arrestee’s social security number contained in the submitted information under section 552.147.<sup>2</sup>

Next, you raise section 552.130 of the Government Code for Texas motor vehicle record information contained in the records you will release to the requestor. 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.” We note that this provision does not protect out-of-state motor vehicle record information. The ST-3 accident report form which you will release contains a Texas driver’s license number. Generally, a Texas driver’s license number must be withheld under section 552.130. We note, however, that the ST-3 accident report form must be released to this requestor under section 550.065(c)(4) of the Transportation Code. Information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under the Act. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 151 (1977), 146 (1976). Therefore, the ST-3 accident report form must be released to the requestor without any

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<sup>2</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.

redactions. The remaining records which you will release do not contain any Texas motor vehicle record information.

In summary, the telephone number you have marked in Exhibit D must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. With the exception of the information subject to section 773.091(g) of the Health and Safety Code, the city must withhold Exhibit E under section 552.101 in conjunction with section 773.091 of the Health and Safety Code. The city must withhold the arrestee's social security number under section 552.147 of the Government Code. With the exception of basic information and the records you state you will release, the city may withhold Exhibits B and C under section 552.108 of the Government Code. The remaining information must be released to the requestor.

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).

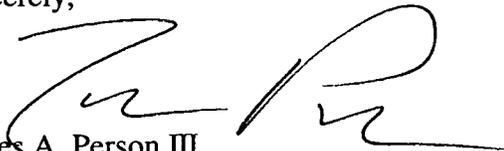
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 'JAP', written over a horizontal line.

James A. Person III  
Assistant Attorney General  
Open Records Division

JAP/sdk

Ref: ID# 253156

Enc. Submitted documents

c: Mr. James F. Scherr  
Scherr, Legate & Ehrlich, PLLC  
109 North Oregon, 12<sup>th</sup> Floor  
El Paso, Texas 79901  
(w/o enclosures)