



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2007

Mr. Joseph Harney
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2007-00265

Dear Mr. Harney:

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# 268673.

The City of Corpus Christi (the "city") received six requests for a specific 9-1-1 recording. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially we must address the city's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body 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(b). Further, under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). Here, the city states that it received the first request for information on October 11, 2006. You were required to request a ruling

from this office by October 25, 2006. However, you did not request a ruling from this office until October 26, 2005. Further, although you state that you received six requests for information, you only submitted four copies of the written requests for information and did not submit the remaining two as required under section 552.301(e) by the fifteen day deadline. Consequently, we find that the city failed to comply with the procedural requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code can constitute such a compelling reason, we will consider whether this exception applies to the 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 made confidential by other statutes. Chapter 772 of the Health and Safety Code 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 772.318 applies to an emergency communication district for a county with a population of more than 20,000. We understand you to state that the city involves an emergency communication district subject to section 772.318 and that the telephone numbers and addresses on the submitted tape were furnished by a service supplier. Upon review, however, we find that the submitted audio tape does not contain originating telephone numbers of 9-1-1 callers furnished by a 9-1-1 service supplier; and the addresses on the tape were furnished by the callers, not the service provider. Thus, no portion of the submitted audio tape is confidential under section 772.318, and thus, the audio tape may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation*

included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. You claim that portions of the submitted audio tape must be withheld under section 552.101 in conjunction with common-law privacy. Upon review, however, we find that the audio tape does not contain any information that is protected by common-law privacy. Accordingly, the city may not withhold the any portion of the submitted audio tape under section 552.101 of the *Government Code* in conjunction with common-law privacy. As you do not raise any other exceptions against disclosure, the submitted audio tape 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).

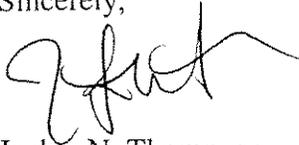
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 268673

Enc. Submitted documents

c: Mr. Ken Sullivan
P. O. Box 6669
Corpus Christi, Texas 78466-6669
(w/o enclosures)

Ms. Mary Ann Cavazos
820 North Lower Broadway
Corpus Christi, Texas 78401
(w/o enclosures)

Mr. Robert Gonzales
P. O. Box 840
Corpus Christi, Texas 78403
(w/o enclosures)

Mr. Bart Bedsole
P. O. Box 840
Corpus Christ, TX 78403
(w/o enclosures)

KZTV
301 Artesian
Corpus Christi, Texas 78401
(w/o enclosures)

KORO
102 North Mesquite
Corpus Christi, Texas 78401
(w/o enclosures)