



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2007

Mr. Jerry Bruce Cain
Assistant City Attorney
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579

OR2007-07942

Dear Mr. Cain:

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 #281750.

The Laredo Police Department (the "department") received a request for any documents pertaining to the arrest of a named individual. You state that a portion of the requested information has been released to the requestor, who is the named individual's attorney. You claim that the submitted information, which consists of Computer Aided Dispatch ("CAD") records and an Internal Affairs Investigative Report, is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that is made confidential under other statutes. We note that 9-1-1 caller information is made confidential under sections 772.118, 772.218 and 772.318 of the Health and Safety Code. 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 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 9-1-1 telephone numbers and addresses. See Health & Safety Code §§ 772.401, et seq. Therefore, if the City of Laredo is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318, the 9-1-1 callers' originating addresses and telephone numbers are excepted from public disclosure based on section 552.101 as information deemed confidential by statute. You have marked, and you seek to withhold, the 9-1-1 callers' names in addition to addresses and telephone numbers on the CAD records. We note that only originating addresses and telephone numbers of 9-1-1 callers on the CAD records are confidential under chapter 772 of the Health and Safety Code.¹ All callers' names and non-originating addresses and telephone numbers on the CAD records must be released.

Section 552.101 of the Government Code also encompasses chapter 143 of the Local Government Code. Laredo is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g).

In cases in which a police department investigates an officer's misconduct and takes disciplinary action against the officer, it is required by section 143.089(a)(2) to place all *investigatory records relating to the investigation and disciplinary action*, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the officer's civil service file maintained under section 143.089(a). *Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.--Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are "from the employing department" when they are held by or in possession of the city police department because of its investigation into a police officer's misconduct, and the police department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* at 120, 122. Such records are subject to release under the Act. See Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to a police officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to a police officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not

¹As our ruling is dispositive, we need not address your argument under section 771.061 of the Health and Safety Code.

be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.--San Antonio 2000, pet. denied); *City of San Antonio v. Tex. Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).

You inform us that the submitted Internal Affairs Investigative Report pertains to an investigation that did not result in disciplinary action against the officer. You further state that this document is maintained in the department's internal file pursuant to section 143.089(g). Based on your representations and our review of the documents at issue, we agree that the submitted report is confidential under section 143.089(g) of the Local Government Code and must be withheld pursuant to section 552.101 of the Government Code.

In summary, we conclude that: if the City of Laredo is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318 of the Health and Safety Code, the 9-1-1 callers' originating addresses and telephone numbers contained within the CAD reports must be withheld under section 552.101 of the Government Code. The department must withhold the submitted report under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code.

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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/jb

Ref: ID# 281750

Enc. Submitted documents

c: Mr. Jose Salvador Tellez
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(w/o enclosures)