



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 29, 2008

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2008-02767

Dear Mr. Phillips:

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# 303414.

The Fort Worth Police Department (the "department") received a request for information pertaining to a specified incident involving a named individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

We note that a portion of the submitted information is the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2007-14302 (2007). Open Records Letter No. 2007-14302 held that the submitted 9-1-1 recordings may be withheld under section 552.108(a)(1) of the Government Code. Thus, to the extent the law, facts, and circumstances on which the prior ruling was based have not changed, the

¹You state that you have redacted certain Texas motor vehicle record information pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). In addition, you state that the city has redacted social security numbers pursuant to section 552.147 of the Government Code. See Gov't Code § 552.147(b) (governmental body may redact social security number without necessity of requesting decision from this office under the Act).

department may continue to rely on Open Records Letter No. 2007-14302 as a previous determination and withhold the submitted 9-1-1 recordings in accordance with this ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which the prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent that the facts and circumstances on which the previous ruling was based have changed, we will address your claims against disclosure for this information 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," and encompasses information made confidential by other statutes. Gov't Code § 552.101. You contend that the submitted information is made confidential under section 261.201 of the Family Code, which provides in pertinent part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

Fam. Code § 261.201(a), (h). You state that the submitted information constitutes files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. Therefore, the submitted information is subject to section 261.201 of the Family Code. However, section 261.201 does not apply to an investigation of child abuse or neglect in a home or facility regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code. *See id.* § 261.201(h).

We note that the incident at issue occurred at a child care facility. Based on the submitted information, we are unable to determine whether the child care facility at issue was regulated

by the Texas Department of Family and Protective Services at the time of the incident. Therefore, to the extent that the child care facility at issue was not regulated by the Texas Department of Family Services at the time of the incident, the submitted information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the submitted information is confidential pursuant to section 261.201 of the Family Code and the department must withhold it under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, to the extent the child care facility at issue was regulated by the Texas Department of Family and Protective Services at the time of the incident, we find that section 261.201 is not applicable to the submitted information and the department may not withhold the information at issue under section 552.101 on that basis. We will therefore address your remaining claims against disclosure of the submitted information.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service provider confidential. *Id.* at 2. Section 772.118 applies to an emergency communications district for a county with a population of more than two million. Section 772.218 applies to an emergency communications district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communications district for a county with a population of more than 20,000.

You state that the city is part of an emergency communications district established under section 772.218. You claim that the telephone number and address contained in the submitted audio recording were furnished by a 9-1-1 service provider. Based on your representations and our review, we agree that the city must withhold the telephone number in the submitted 9-1-1 audio recording under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. However, we note that the address at issue was provided by the caller. Because this address was not provided by a 9-1-1 service provider, section 772.218 is not applicable to this information and it must be released.

Section 552.136 of the Government Code provides in part that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). The department must withhold the insurance policy number you have marked under section 552.136.

In summary, to the extent the law, facts, and circumstances on which the prior ruling was based have not changed, the department may continue to rely on Open Records Letter No. 2007-14302 as a previous determination and withhold the submitted 9-1-1 recordings in accordance with this ruling. To the extent that the child care facility at issue was not regulated by the Texas Department of Family Services at the time of the incident, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In the event that the child care facility at issue was regulated by the Texas Department of Family and Protective Services at the time of the incident, the department must withhold (1) the telephone number in the submitted 9-1-1 audio recording under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code; and (2) the information you have marked under 552.136 of the Government Code. The remaining submitted 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

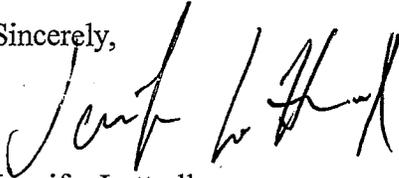
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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 "Jennifer Luttrall". The signature is fluid and cursive, with the first name being the most prominent.

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 303414

Enc. Submitted documents

c: Mr. J. Mark Sudderth
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(w/o enclosures)