



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 20, 2008

Mr. Christopher D. Taylor
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2008-06863

Dear Mr. Taylor:

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# 312298.

The City of Waco Police Department (the "department") received a request for a specified incident report including copies of pictures, CD's, and case notes. You claim that the submitted 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.

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 originating telephone number and address of a 9-1-1 caller contained in the submitted documents in Exhibit 4 are excepted under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772, and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Health & Safety Code § 772.318(a), (c); *see also* Open Records

Decision No. 649 (1996). We understand the city of Waco to be part of an emergency communication district that was established under section 772.318.¹ Thus, based on your representations and our review, we determine that the telephone number and address you have marked are excepted from public disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.

We next address your arguments under section 552.108 of the Government Code for the information submitted in Exhibit 3. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). 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), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information in Exhibit 3 relates to a pending criminal investigation. Based on this representation, we conclude that the release of this information 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable.

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, which you acknowledge must be released, the department may withhold the information you have marked pursuant to section 552.108(a)(1).²

In summary, the department must withhold the originating telephone number and address of a 9-1-1 caller that you have marked from the submitted CAD report under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. Other than basic information, the department may withhold the information you have marked

¹Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

²In light of our conclusion under section 552.108(a)(1), we need not address your claim under section 552.108(a)(1).

in Exhibit 3 under section 552.108(a)(1) of the Government Code. The remaining information must be released.³

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.

³Section 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.

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 'Jessica J. Maloney', with a long, sweeping horizontal flourish extending to the right.

Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 312298

Enc. Submitted documents

c: Mr. Jack Thomas
8014 May Circle
Woodway, Texas 76712
(w/o enclosures)