



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 28, 2008

Ms. Nicole B. Webster  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2008-10149

Dear Ms. Webster:

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# 316984.

The City of Waco (the "city") received a request for "any and all criminal cases and dispositions of crimes involving [a named individual]" from that individual's representative. You state that you have released some of the requested information. You claim that portions of the submitted information are 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.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. section 552.301(d) of the Government Code provides:

A governmental body that requests an attorney general decision under Subsection (a) must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request:

- (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

Gov't Code § 552.301(d). You have provided this office a copy of the written statement that the city timely sent to the requestor pursuant to section 552.301(d)(1) informing him that the city wished to withhold a portion of the submitted information, and had asked for a decision from this office. However, the city did not send the requestor a copy of its letter to this office as required by section 552.301(d)(2). *See also* Gov't Code § 552.301(e-1) (governmental body that submits written comments to the attorney general under subsection 552.301(e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body; authorizing redaction if comments disclose or contain substance of information requested). Therefore, we conclude 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. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see also 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); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301, you have waived section 552.108, and may not withhold any of the submitted information on that basis. However, sections 552.101 and 552.130 can provide compelling reasons to overcome this presumption. Therefore, we will consider your arguments under these exceptions.

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 Exhibit 4 is 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* Open

Records Decision No. 649 (1996). We understand the city to be part of an emergency communication district that was established under section 772.318.<sup>1</sup> Thus, based on your representations and our review, we determine that the telephone numbers you have marked are excepted from public disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.

Section 552.130 of the Government Code excepts from public disclosure information that relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a). Upon review of the remaining information, we find that the city must withhold the Texas motor vehicle record information you have marked under section 552.130.

Finally, we note that you have highlighted the social security numbers in the remaining information. 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. We agree that the city may withhold the social security numbers you have marked under section 552.147.<sup>2</sup>

In summary, the city must withhold the telephone numbers you have marked under section 552.101 in conjunction with section 772.318 of the Health and Safety Code and the motor vehicle record information you have marked under section 552.130 of the Government Code. The city may withhold the social security numbers you have marked under section 552.147 of the Government Code. The remaining 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

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

<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.

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). If the governmental body does not file suit over 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).

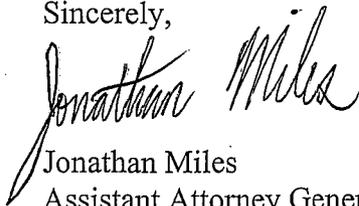
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/jh

Ref: ID# 316984

Enc. Submitted documents

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(w/o enclosures)