



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2008

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

OR2008-11340

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# 319287.

The City of Waco (the "city") received a request for all reports, diagrams, witness statements, photographs, videos, and 9-1-1 calls pertaining to a specified automobile accident. You state that you have made basic information available to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that a portion of the submitted audio recording is not responsive to the instant request. The request concerns an automobile accident; however, a portion of the submitted audio recording is a 9-1-1 call reporting vandalism. The portion of the audio recording concerning vandalism is not responsive and need not be released in response to this request, to the extent that the city has the capacity to redact this information from the submitted audio recording.

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 of a 9-1-1 caller contained in the submitted documents 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 911 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 772.318.¹ Thus, based on your representations and our review, we determine that the address and telephone numbers we have marked are excepted from public disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. We note that the remaining information at issue is not an originating telephone number or address of a 9-1-1 caller; this information is not confidential under section 772.318 of the Health and Safety Code and may not be withheld from disclosure under section 552.101.

Section 552.108(a)(1) of the Government Code 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 “pursuant to Report #08-10904” 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 state you have released, the city may withhold Report #08-10904, including the the submitted audio recording and the pictures contained on the CD, pursuant to section 552.108(a)(1).

In summary, the city must withhold the address and telephone number we have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health

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

and Safety Code. With the exception of basic information, the city may withhold Report #08-10904, including the the submitted audio recording and the pictures contained on the CD, under section 552.108 of the 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 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). 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).

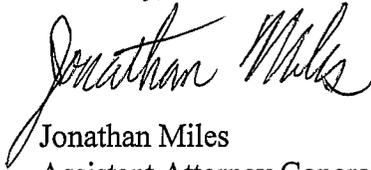
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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/ma

Ref: ID# 319287

Enc. Submitted documents

c: Mr. John Bays
Harrison, Davis, Steakley P.C.
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(w/o enclosures)