



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 13, 2008

Ms. Julie V. Pandya  
Assistant City Attorney  
Waco Police Department  
P.O. Box 2570  
Waco, Texas 76720

OR2008-15614

Dear Ms. Pandya:

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# 326509.

The Waco Police Department (the "department") received a request for information pertaining to a specific incident. You state that you will release a redacted copy of the 9-1-1 call sheet, the incident report, and some of the photographs. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you refer us to a compact disc ("CD") that you claim contains confidential information. You did not, however, submit the CD for our review. Because you have not submitted the CD for our review, we find that you have failed to comply with section 552.301 with respect to this information. See Gov't Code § 552.301(e)(1)(D). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a compelling reason exists to withhold the information from disclosure. See *id.* § 552.302; *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 pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, 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).

You claim that the CD contains death scene photographs of an individual. The department concedes that an individual's privacy interests lapse at death, but contends that the privacy interests of the individual's next of kin may be implicated by the release of the photographs. *See Nat'l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570 (2004). The department informs us that it notified the next of kin of the deceased of her opportunity to assert a privacy interest in the photographs. *See Gov't Code* § 552.304 (providing that interested party may submit comments stating why information should or should not be released). As of the date of this letter, however, we have not received any comments from the next of kin. The department raises section 552.130 of the Government Code for motor vehicle information contained in the CD. Section 552.130 can provide a compelling reason for non-disclosure under section 552.302. However, because the department has not submitted the CD for our review, we have no basis for finding any of its contents confidential. Therefore, we have no choice but to order the department to release the CD. If you believe the CD contains confidential information that may not lawfully be released, you must challenge this ruling in court as outlined below.

We will now address the department's arguments against disclosure of 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. Chapter 772 of the Health and Safety Code pertains 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 of Waco is part of an emergency communication district that was established under section 772.318.<sup>1</sup> Based on your representations and our review of the information, we find that the originating telephone number you have marked on the 9-1-1 call sheet was generated by the emergency communication district service supplier. Thus, the telephone number is excepted from public disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. You inform us that the address that you have marked on the 9-1-1 call sheet is the address of the cellular telephone tower closest to the location of the individual at the time of the call. Section 772.318 protects originating addresses of 9-1-1 callers. Because this address is not the originating address of the caller, it is not confidential under section 772.318 must be released.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." *Gov't Code* § 552.130(a)(1), (2). We note, however, the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, Texas motor

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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.

vehicle record information that pertains to deceased individuals may not be withheld under section 552.130. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); see also Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). You have marked the Texas driver's license and license plate numbers belonging to the deceased individual. The department may not withhold these numbers, which we have marked for release, under section 552.130 of the Government Code. You have also marked the Texas driver's license numbers of living persons. We agree the department must withhold the Texas driver's license numbers of living persons under section 552.130 of the Government Code.

You claim that the marked social security number is excepted from disclosure under section 552.147 of the Government Code. Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. We note, however, that the social security number belongs to the deceased. By its terms, section 552.147 is only applicable to the social security number of a living person. Therefore, the department may not withhold the marked social security number under section 552.147 of the Government Code.

In summary, the department must withhold the telephone number on the 9-1-1 call sheet under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Except for the Texas motor vehicle information belonging to the deceased, the department must withhold the Texas driver's license numbers under section 552.130. The remaining information, including the contents of the CD, 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). 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,



Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/eeg

Ref: ID# 326509

Enc. Submitted documents

c: Mr. George Long  
101 Houston Street  
McGregor, Texas 76657  
(w/o enclosures)