



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2010

Mr. Bryan McWilliams
Assistant City Attorney
City of Amarillo
200 South East Third Avenue
Amarillo, Texas 79101-1514

OR2010-00006

Dear Mr. McWilliams:

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# 367573.

The Amarillo Police Department (the "department") received a request for the name and telephone number of the 9-1-1 caller in case number 09-92930. You claim portions of the submitted information are excepted from disclosure under section 552.1175 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). You state the request for information was received by the department on October 16, 2009. Upon review of the submitted request for information, we note it is stamped by the department as having been received on

¹Although you claim section 552.117 of the Government Code for portions of the submitted information, section 552.1175 is the proper exception to raise in this instance because the department does not hold the submitted information in an employment capacity.

October 15, 2009. The envelope in which the department's request for a ruling was submitted to this office bears a postmark date of November 4, 2009. *See id.* § 552.308(b) (prescribing standards for timeliness of action by United States Postal Service or interagency mail or common or contract carrier). Accordingly, we conclude the department failed to comply with the procedural requirements mandated by 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 requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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); *see also* Open Records Decision Nos. 319 (1982), 630 (1994). 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 Nos. 630 at 3 (1994), 325 at 2 (1982). Because section 552.1175 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this exception.

Next, we note the requestor seeks the "9-1-1 caller's name and telephone number." You have submitted a document that contains information beyond the 9-1-1 caller's name and telephone number. Thus, the portions of the submitted document that do not contain the caller's name or telephone number are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release that information in response to the request.

Section 552.1175 provides in part:

(a) This section applies only to:

...

(3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department[.]

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

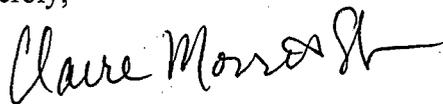
- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code. § 552.1175(a)(3), (b). The responsive information contains the home and cellular telephone numbers of an employee of the Texas Department of Criminal Justice. We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Thus, if the employee elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, then the department must withhold information we have marked under section 552.1175. If the employee does not elect to restrict access to the information we have marked, then the department may not withhold this information under section 552.1175.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/eb

Ref: ID# 367573

Enc. Submitted documents

c: Requestor
(w/o enclosures)