



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 11, 2010

Ms. Yvette Aguilar  
Assistant City Attorney  
City of Corpus Christi  
321 John Sartain  
Corpus Christi, Texas 78401

OR2010-12172

Dear Ms. Aguilar:

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# 390155.

The Corpus Christi Police Department (the "department") received a request for 9-1-1 calls and dispatch logs relating to two specified addresses and all reports relating to the requestor or his children from a specified time period. You state you have released some information to the requestor. You indicate you will withhold Texas license plate numbers pursuant to the previous determination issued in Open Records Decision No. 684 (2009).<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> 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 that a governmental body must follow

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<sup>1</sup>We note that this office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130, without the necessity of requesting an attorney general decision.

<sup>2</sup>You inform us the department no longer asserts the other exceptions claimed in its June 9, 2010 letter to this office.

in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You state the department received the request for information on May 25, 2010. Thus, the department's fifteen business day deadline under section 552.301(e) was June 16, 2010.<sup>3</sup> Although your arguments are dated June 16, 2010, the envelope in which they were submitted bears a postmark date of June 17, 2010. *See id.* § 552.308 (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, 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 procedural requirements of section 552.301 results in the legal presumption the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider your arguments under this exception.

Next, we note, and you acknowledge, portions of tracks 2, 3, 4, and 5 of the submitted audio recordings contain 9-1-1 calls that are not related to either of the specified addresses. You further state the department lacks the technological capability to redact the nonresponsive portions of these audio recordings. Because the department cannot separate the responsive portions of these audio recordings, we will address the audio recordings in their entirety.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides in part:

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<sup>3</sup>You inform us May 31, 2010 was a department holiday. *See* Gov't Code § 662.003. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act.

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c); *see id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of title 3 of Family Code). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). You assert track 2 of the submitted audio recording is confidential under section 58.007. Upon review, we find you have failed to show track 2 is a law enforcement record relating to juvenile conduct. Therefore, this information is not confidential under section 58.007(c) of the Family Code, and the department may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses information protected by section 261.201 of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under

this chapter or in providing services as a result of an investigation.

*Id.* § 261.201(a). You state portions of the submitted information were used or developed in an investigation of alleged or suspected child neglect. *See id.* § 261.001(4) (defining “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). We note, however, the information at issue pertains to an assault involving adults and does not reflect it was used or developed in an investigation under chapter 261. Consequently, we find you have failed to adequately demonstrate how this information was used or developed in an investigation under chapter 261 of the Family Code. We therefore conclude section 261.201 is not applicable in this instance. Accordingly, the department may not withhold any of the submitted information under section 552.101 on that basis.

Section 552.101 also encompasses 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). You inform us the City of Corpus Christi is part of an emergency communication district that was established under section 772.318 of the Health and Safety Code.<sup>4</sup> You have marked telephone numbers in the submitted event information documents and CAD records that you seek to withhold under section 552.101 in conjunction with section 772.318. You claim these telephone numbers were furnished by the 9-1-1 service supplier. Based on your representation and our review, we conclude the telephone numbers you have marked, and the telephone number we have marked, are confidential under section 772.318 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. You also state a portion of track 4 of the submitted audio recordings contains a telephone number that was furnished by a 9-1-1 service supplier. Because the department lacks the technological capability to redact this confidential portion from track 4, we therefore conclude the department must withhold track 4 in its entirety under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.

We note some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle title or registration issued by a Texas agency is excepted from public release.<sup>5</sup> Gov’t Code

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<sup>4</sup>Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

<sup>5</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

§ 552.130(a)(2). Accordingly, the department must withhold the additional Texas motor vehicle record information we have marked under section 552.130.

In summary, the department must withhold the marked telephone numbers and track 4 of the audio recordings under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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](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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/tp

Ref: ID# 390155

Enc. Submitted documents

c: Requestor  
(w/o enclosures)