



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2011

Mr. Robert Almonte
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2011-12200

Dear Mr. Almonte:

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# 427693.

The City of El Paso (the "city") received a request for information pertaining to a specified incident involving the requestor's client. You state the city has released some of the requested information. We note you have redacted a social security number pursuant to section 552.147(b) of the Government Code.¹ You claim that some of 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 must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 552.301(b). You state the city received

¹Section 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. *See* Gov't Code § 552.147(b).

the request for information on May 26, 2011. You explain the city was closed May 27 and 30, 2011, and June 3 and 10, 2011. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Therefore, the ten-business-day deadline was June 15, 2011. The city requested a ruling from this office via a letter meter-marked June 16, 2011. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, the city failed to request a decision from this office within the ten-business-day period prescribed by subsection 552.301(b).

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 and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, orig. proceeding); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, orig. proceeding) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Although you raise section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301, the city has waived section 552.108 and may not withhold the information on that basis. However, because section 552.101 can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

Next, you have redacted a 9-1-1 caller's information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. In Open Records Letter No. 2003-0708 (2003), this office issued a previous determination authorizing the withholding of the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 772.318 of the Health and Safety Code. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Accordingly, the city must withhold the 9-1-1 caller's telephone number and address we have marked pursuant to the previous determination in Open Records Letter No. 2003-0708. However, we note you have also redacted information that is not a telephone number or address of a 9-1-1 caller, therefore, it is information that is not subject to the previous determination. You do not

assert, nor does or review of our records indicate, that you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a), ORD 673. Because we can discern the nature of the redacted information, being deprived of that information does not inhibit our ability to make a ruling. However, in the future, the city must not redact requested information that it submits to this office in seeking an open records ruling, unless the information is subject to sections 552.024(c) or 552.147(b) of the Government Code, or is the subject of a previous determination under section 552.301 of the Government Code. *See* Gov't Code §§ 552.024(c), .147(b), 301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.* § 552.302.

You raise section 552.101 of the Government Code for portions of the submitted information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as chapter 772 of the Health and Safety Code. Chapter 772 authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. Health & Safety Code § 772.304.

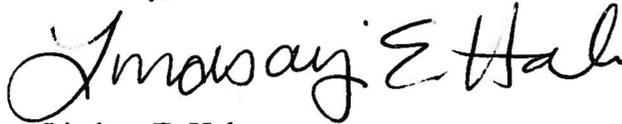
You state the city is part of an emergency communication district established under chapter 772. You also explain the information at issue was furnished by a service supplier. You have marked the longitude, latitude, and address of the location of the incident. However, the plain language of section 772.318 states that confidentiality applies to only originating telephone numbers and the addresses associated with those numbers. *See id.* § 772.318(a), (c); Open Records Decision Nos. 649 at 3 (1996) (section 772.318 makes confidential current telephone numbers of subscribers and the addresses associated with the numbers and nothing more), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). Therefore, none of the remaining information you have redacted may be withheld under section 552.101 on the basis of section 772.318. As you raise no further exceptions against disclosure of the remaining information, it must be released.

In summary, the city must withhold the 9-1-1 caller's telephone number and address we have marked pursuant to the previous determination in Open Records Letter No. 2003-0708. The city must release the remaining information.

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/bs

Ref: ID# 427693

Enc. Submitted documents

c: Requestor
(w/o enclosures)