



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2011

Ms. Jennifer C. Cohen
Assistant General Counsel
Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2011-16529

Dear Ms. Cohen:

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# 435831 (PIR# 11-2128).

The Department of Public Safety (the "department") received a request for the investigation of the homicide of a named individual. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, although you take no position as to whether the remaining submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of AT&T Wireless Services ("AT&T"), Verizon, and Tracfone Wireless, Inc. ("Tracfone"). Accordingly, you state, and provide documentation showing, you notified AT&T, Verizon, and Tracfone of the request for information and of their rights to submit arguments to this office as to why their submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from AT&T, Verizon, or Tracfone explaining why their submitted information

should not be released. Therefore, we have no basis to conclude AT&T, Verizon, or Tracfone has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the department may not withhold any portion of the submitted information on the basis of any proprietary interest AT&T, Verizon, or Tracfone may have in the information.

You seek to withhold the submitted autopsy photographs under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. We note this office recently issued Open Records Letter No. 2011-15545 (2011), a previous determination authorizing the department to withhold autopsy photographs of the body of a person under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure, unless the photographs are subject to disclosure under subpoena or authority of other law or if the photographs are of the body of a person who died while in the custody of law enforcement. *See* Crim. Proc. Code art. 49.25, § 11. You do not indicate either of the statutory exceptions to confidentiality is applicable in this instance. Therefore, pursuant to Open Records Letter No. 2011-15545, the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, fact, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests).

The remaining documents include information that is subject to section 552.136 of the Government Code.¹ Section 552.136 provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). Accordingly, the department must withhold the cellular account numbers within the remaining information, a representative sample of which we have marked, under section 552.136 of the Government Code.

The remaining information also contains e-mail addresses that are subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the department must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners have affirmatively consented to their public disclosure.²

In summary, pursuant to Open Records Letter No. 2011-15545, the department must withhold the submitted autopsy photographs under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The department must also withhold (1) the cellular account numbers within the remaining information, a representative sample of which we have marked, under section 552.136 of the Government Code; and (2) the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners have affirmatively consented to their public disclosure. The department 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 435831

Enc. Submitted documents

c: Requestor
(w/o enclosures)

AT&T Wireless Services
National Compliance Center
P.O. Box 24679
West Palm Beach, Florida 33416-4679
(w/o enclosures)

Verizon Legal Compliance
c/o Jennifer C. Cohen
Assistant General Counsel
Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001
(w/o enclosures)

Tracfone Wireless, Inc.
c/o Jennifer C. Cohen
Assistant General Counsel
Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001
(w/o enclosures)