



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2012

Ms. Donna L. Johnson
Counsel for City of Spring Valley
Olson & Olson, LLP
2727 Allen Parkway, Suite 6000
Houston, Texas 77019-2133

OR2012-05476

Dear Ms. Johnson:

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# 451026.

The City of Spring Valley (the "city"), which you represent, received three requests from the same requestor for information concerning (1) communications between the city police department and persons at a specified address during a specified time period, including a specified conversation, and (2) any incidents between three named individuals, including a specified incident. You state most of the information has been released to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we must address the city's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving the request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See Gov't Code* § 552.301(b). Pursuant to section 552.301(e), within fifteen business days of receipt of the request the governmental body must submit to this office (1) 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 id.* § 552.301(e). You inform us the city received the first two requests on October 18, 2011 and the third request on October 31, 2011. Thus, the city's ten-business-day deadlines were November 1 and 14, 2011, and the fifteen-business-day deadlines were November 14 and 21, 2011, respectively. However, you submitted the required information to our office in an envelope postmarked February 9, 2012. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Consequently, we find the city failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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, 381-82 (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 No. 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 No. 150 at 2 (1977). You raise sections 552.101 and 552.130 of the Government Code, each of which makes information confidential under the Act and therefore provides a compelling reason to withhold information. Therefore, we will address the applicability of sections 552.101 and 552.130.

We next note the city has redacted information from the submitted documents. However, you do not assert, nor do our records indicate, you have been authorized to withhold any of the redacted information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the city should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

Next, we note portions of the submitted information, which we have marked, are not responsive to the instant requests because they reflect incidents that were not called in by residents at the specified address and did not occur between the named individuals. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

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 made confidential by other statutes. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Section 772.118 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than three million and makes confidential the originating telephone numbers and addresses of 9-1-1 callers provided by a service supplier. *See* Open Records Decision No. 649 (1996). The city is in Harris County, and we understand the city is part of an emergency communication district established under section 772.118. We conclude the city must withhold the originating telephone numbers and addresses of 9-1-1 callers in the responsive reports under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code, to the extent they were furnished by a 9-1-1 service supplier. To the extent they were not provided by a 9-1-1 service supplier, this information may not be withheld under section 552.101 in conjunction with section 772.118.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license, title, or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1)-(2). The responsive CD we have indicated contains information protected by section 552.130. You state the city lacks the technical capability to redact the information subject to section 552.130 from the audio recording. However, because the city had the capability to copy the audio recording at issue in order to submit the requested information for our review, we believe the city has the capacity to produce a copy of only the non-confidential portions of the submitted audio recording. Therefore, the city must withhold the information we have indicated under section 552.130.

In summary, the city must withhold the originating telephone numbers and addresses of 9-1-1 callers in the responsive reports under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code, to the extent they were furnished by a 9-1-1 service supplier. The city must withhold the information we have indicated in the CD under section 552.130 of the Government Code. The remaining responsive information must be released to the requestor.

After due consideration, we have decided to grant a previous determination permitting the city to withhold the originating telephone numbers and addresses of 9-1-1 callers provided by a 9-1-1 service supplier under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code. *See id.* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) that the city must withhold under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code the originating telephone number and address of a 9-1-1 caller, if it was furnished to the city

by a service supplier established in accordance with chapter 772 of the Health and Safety Code. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the city need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 451026

Enc. Submitted documents

c: Requestor
(w/o enclosures)