



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 17, 2012

Mr. Russell Brown
Manager of Information Services
City of Bellaire
5110 Jessamine
Bellaire, Texas 77401

OR2012-11024

Dear Mr. Brown:

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# 459041.

The Bellaire Police Department (the "department") received a request for the dates, times, locations, and case numbers for all auto accidents during a specified period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor seeks only the dates, times, locations, and case numbers related to the accidents. The information you have submitted that falls outside of these specified categories of information is not responsive to the request. This ruling does not address the applicability of information that is not responsive to the request, and the department is not required to release non-responsive information.

¹The department makes claims under section 552.101 in conjunction with section 38.18 of the Penal Code, section 58.007 of the Family Code, and common-law and constitutional privacy, as well as sections 552.117, 552.1175, and 552.130 for information contained in CR-3 reports. However, the department has not submitted any CR-3 reports. Accordingly, we need not address your arguments for this information. *See generally* Gov't Code §§ 552.002, .021, .227, .351. Regardless, we note section 38.18 has been found unconstitutional. *See Anderson Courier Service v. State*, 104 S.W.3d 121 (Tex. App.—Austin 2003, pet. denied).

Next, we address your general assertion that the responsive information should be withheld because the requestor will use this information to circumvent the protections provided by section 550.065 of the Transportation Code. Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). You explain you believe the requestor is seeking the requested information in order to obtain the information listed in section 550.065(c)(4) and thus gain access to CR-3 accident report forms. We note a governmental body is prohibited from inquiring as to how the requestor plans to use the information. *See Gov't Code § 552.222(a)*. Additionally, an officer for public information is not responsible for the use that may be made of information released to the public under the Act. *See id.* § 552.204; Open Records Decision No. 508 at 3 (1988) (use that maybe made of information does not control whether it falls within exception to disclosure). Therefore, the department may only withhold the responsive information if it is excepted from disclosure under the Act or made confidential by law.

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 chapter 772 of the Health and Safety Code, which makes the originating telephone numbers and addresses of certain 9-1-1 calls confidential. This chapter authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See Open Records Decision No. 649 (1996)*. These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. These sections only protect the originating addresses and telephone numbers of individuals who actually called 9-1-1. In this instance, we know that the City of Bellaire is located in Harris County, which has a population of more than two million. Accordingly, we will address your claim under section 772.118.

When asserting section 772.118 of the Health and Safety Code, a governmental body must indicate whether or not it is part of a 9-1-1 district subject to that section, and whether or not the originating addresses and telephone numbers of the 9-1-1 callers were supplied by a 9-1-1 service supplier to that 9-1-1 district. *See Gov't Code § 552.301(e)*. Furthermore, the 9-1-1 callers should be identified in the submitted information. Upon review, however, we find none of the responsive information is subject to chapter 772 of the Health and Safety Code,

and the department may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10–12. Section 411.083 deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090–. 127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with Government Code chapter 411, subchapter F. We note, however, the definition of CHRI does not include driving record information maintained by the DPS under subchapter C of chapter 521 of the Transportation Code. *See id.* § 411.082(2)(B). Upon review, we find none of the responsive information constitutes CHRI obtained from DPS or any other criminal justice agency. *See id.* § 411.082(2). Accordingly, the department may not withhold any of the responsive information under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. As you raise no other exceptions to disclosure, the responsive information must be released.

You request that, in the event any of the responsive information is “found to be open for public disclosure,” this office grant the department the authority to disclose all CR-3 accident report forms to any requestor regardless of the confidentiality provisions found in section 550.065 of the Transportation Code. We note, however, that section 550.065 is a statute enacted by the legislature, and this office does not possess the authority to allow any governmental body to bypass a statute’s confidentiality provisions. *See generally id.* § 552.301 (indicating this office’s authority when rendering open records decisions). Therefore, the department must continue to follow the legal requirements of the Act and the Transportation Code.

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 cursive script, appearing to read "Neal Falgoust".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 459041

Enc. Submitted documents

c: Requestor
(w/o enclosures)