



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 29, 1994

Ms. Sheree L. Rabe
Assistant City Attorney
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR94-782

Dear Ms. Rabe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request an identification number, ID# 26664.

The City of Georgetown (the "city") has received a request for "any and all records and/or reports regarding" an accident the requestor had. The city has released most of the information, but has withheld the telephone number of the individual who called the city to report the accident. You state that normally the city would release this information; in this instance, however, "[f]or some reason, someone in the Police Department called information to get the phone number . . . and found out that the number is unlisted." You further point out that nothing in the record itself indicates the number is unlisted; the city is aware that the number is unlisted only because of the call to directory assistance.

In light of the number's unlisted status, you question whether the information is private. You specifically cite section 552.102 of the Government Code. Section 552.102 applies only to information in a personnel file. We do not understand the requested information to be information in a personnel file. Accordingly, section 552.102 does not apply.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You have not cited, and we are not aware of, any statute that deems

confidential the unlisted telephone number of a person who calls a municipality to report an accident. Additionally, we do not believe the phone number is confidential under the constitution.¹

We next consider whether the requested information is confidential by judicial decision, *i.e.*, under the common law. The Texas Supreme Court, in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), articulated a two-pronged test that we use to determine whether information is confidential under the doctrine of common-law privacy and therefore exempt from required public disclosure under section 552.101. Under the test, information is confidential if (1) it contains highly intimate or embarrassing facts about an individual's private affairs such that the release of the information would be highly offensive to a reasonable person and (2) the public has no legitimate interest in it. *Industrial Found.*, 540 S.W.2d at 685.

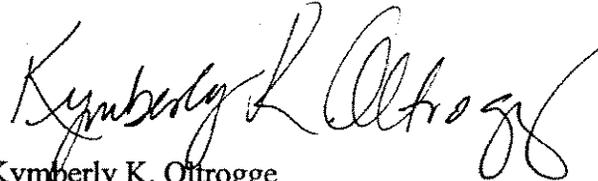
This office has stated in several open records decisions that a telephone number is not intimate and embarrassing information. *See, e.g.*, Open Records Decision Nos. 554 (1990) at 3; 478 at 3, 455 at 7 (1987). We also have indicated, however, that a telephone number may be private under the common law upon a showing of special circumstances. *See* Open Records Decision Nos. 532 (1989) at 2; 169 (1977) at 2; *see also* Open Records Decision No. 123 (1976) at 6. The special circumstances necessary to bring such information within the right of common-law privacy "must be more than a desire for privacy or a generalized fear of harassment or retribution." Open Records Decision No. 169 at 6.

We have no indication here that the complainant's telephone number is unlisted for any reason other than a desire for privacy or a generalized fear of harassment or retribution. Consequently, we conclude that the requested telephone number is not private under the common law nor under section 552.101. The city must release the information to the requestor.

¹The constitutional right of privacy protects information that falls within one of the "zones of privacy" the United States Supreme Court has articulated, *see Paul v. Davis*, 424 U.S. 693 (1976); *Roe v. Wade*, 410 U.S. 113 (1973), as well as an individual's interest in avoiding the disclosure of personal matters to the public or to the government. Generally, the constitutional right of privacy protects information that is not within one of the zones of privacy only if it relates to the most intimate aspects of human affairs. *See Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986). The requested telephone number here does not pertain to a matter within a constitutional zone of privacy, nor does it relate to the most intimate aspects of human affairs.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

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Ref.: ID# 26664

Enclosures: Submitted documents

cc: Ms. Janet R. Timmins
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(w/o enclosures)