



May 1, 2002

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR2002-2271

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162430.

The City of Longview (the “city”) received a request for “every call to 3025 Malboro . . . for the last 10 years[,]” and two specified arrest reports. You claim that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you did not submit information responsive to the portion of the request regarding the named individual’s arrest for “paraphernalia/drugs” for our review. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of the request exists, we assume that the city has released it to the requestor. If the city has not released any such information, the city must release it to the requestor at this time. See Gov’t Code §§ 552.301(a), .302.

You contend that the telephone number and address of the 911 caller are protected from disclosure by section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. Section 552.101 of the Government Code “excepts from required public disclosure information considered to be confidential by law, either

¹As you only seek to withhold a portion of the requested information, we presume that you have released the remaining requested information. See Gov’t Code §§ 552.006, .301, .302; see also Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

constitutional, statutory, or by judicial decision.” In Open Records Decision No. 649 (1996), which interpreted section 772.318 of the Health and Safety Code, we examined several confidentiality provisions in chapter 772 of the Health and Safety Code. To the extent that portions of the information here involve an emergency 911 district established in accordance with chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts, the information may be confidential under chapter 772. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 911 callers furnished by a service supplier. See Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. See Health & Safety Code §§ 772.401, *et seq.* Thus, if the emergency communication district here is subject to section 772.118, 772.218 or 772.318, the telephone number and address of the 911 caller that you have marked are protected from public disclosure under section 552.101 as information deemed confidential by statute. If the emergency communication district here is not subject to section 772.118, 772.218 or 772.318, the caller’s telephone number and address must be released.

You further argue that “the fact that this call sheet is responsive to a request for all calls from [sic.] a specific address may tend to reveal . . . the originating address.” We note, however, that the language of a confidentiality provision controls the scope of the protection. Attorney General Opinion DM-181 (1992) at 5; Open Records Decision Nos. 649 at 3 (1996), 478 (1987). Furthermore, because section 552.001(a) of the Government Code mandates that the Public Information Act (the “Act”) be liberally construed, this office will strictly construe confidentiality provisions in favor of granting a request for information. *A & T Consultants, Inc., v. Sharp*, 904 S.W.2d 668, 679 (Tex.1995) (concluding that to determine whether certain tax information is confidential by statute court must “giv[e] a narrow reading to the Tax Code’s confidentiality provisions and a liberal reading to the [Act]”). Section 772.318 makes confidential only “current telephone numbers of subscribers and the addresses associated with the numbers on a call-by-call basis.” Therefore, the city may not withhold the CAD record in its entirety under this provision. See Open Records Decision No. 649 (1996).

Section 552.101 also encompasses the common-law right of privacy. Information is protected by the common-law right of privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. See *Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977); see also Open Records Decision No. 611 at 1 (1992). This office has found that an individual’s personal financial information not relating to a financial transaction between the individual and a governmental body is excepted from required public

disclosure under common-law privacy as encompassed by section 552.101 of the Government Code. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). We find no indication that the financial information at issue relates to a transaction between the individual and a governmental body. We have accordingly marked the financial information for redaction and determine that this information must be withheld pursuant to section 552.101 in conjunction with the common-law right to privacy.

You also claim that portions of the submitted information, which you have marked, are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle information that you have marked from disclosure pursuant to section 552.130.

In summary, the city must withhold the marked motor vehicle information from disclosure pursuant to section 552.130. Provided that the emergency communication district here is subject to section 772.118, 772.218 or 772.318, the telephone number and address of the 911 caller are protected from public disclosure under section 552.101. If the emergency communication district here is not subject to section 772.118, 772.218 or 772.318, the caller's telephone number and address must be released. The city must withhold the personal financial information that we have marked under section 552.101 in conjunction with common-law privacy.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 162430

Enc. Submitted documents

c: Ms. Lisa White
325 South Smith
Vinita, Oklahoma 74301
(w/o enclosures)