



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 26, 2003

Ms. Meredith Ladd
Brown & Hoffmeister, L.L.P.
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2003-4392

Dear Ms. Ladd:

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# 183356.

The Town of Flower Mound (the "Town"), which you represent, received a request for all 9-1-1 calls and any incident reports pertaining to a specified address for the last two years. You assert the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have reviewed the information you submitted and we have considered the exceptions you claim.

Section 552.108(a)(1) states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable to the information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986) (law enforcement agency must explain how release of particular records or parts thereof will interfere with law enforcement or prosecution). You inform us the submitted offense report pertains to a pending investigation. Based on your representations and our review of the submitted information, we believe you have established that release of the information "would interfere with the detection, investigation, or prosecution of crime." *Id.*

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. – Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), which includes a detailed description of the offense. Thus, with the exception of the basic front page offense and arrest information, the Town may withhold the submitted information we have marked based on section 552.108 of the Government Code.

With respect to the remaining information at issue, we address your claim under section 552.101 of the Government Code. Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information made confidential by other statutes.

Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. 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 911 service supplier. *See* Open Records Decision No. 649 (1996). Based on your representation that the Town is part of an emergency communication district established under chapter 772, we conclude the Town must withhold the originating address and telephone number contained in the documents at issue if they were furnished by a 911 service supplier pursuant to section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Information is protected under the common-law right to privacy when (1) it contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Based on our review of the submitted information, we believe the remaining information at issue contains such highly intimate or embarrassing facts as to warrant protection under common-law privacy. In addition, the public does not have a legitimate interest in the information. Therefore, the Town must withhold the information we have marked under section 552.101 of the Government Code and common-law privacy.

In summary, with the exception of basic information, the Town may withhold some of the submitted information, which we have marked, under section 552.108 of the Government Code. The Town must release the remaining documents with the following

redactions: 1) the originating address and phone number furnished by a 911 service supplier contained in the 911 call information under section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code, and 2) the information we have marked under section 552.101 and 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 Dep't of Pub. 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,

A handwritten signature in cursive script that reads "Christen Sorrell".

Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 183356

Enc: Submitted documents

c: Mr. Richard Cunningham
1528 Irving Road
Irving, Texas 75060
(w/o enclosures)