



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 12, 2004

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2004-2914

Dear Ms. Graham:

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# 199352.

The Mesquite Police Department (the "department") received a request for information pertaining to a specified address during a particular time period. You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Section 261.201(a) of the Family Code provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Based on your arguments and our review of the submitted information, we find that the information that we have marked is encompassed by chapter 261 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). We assume that the department has not adopted any regulations that would permit access to this information. Given that assumption, we conclude that the information at issue is confidential under section 261.201 of the Family Code and, thus, must be withheld pursuant to section 552.101 of the Government Code.¹

You next contend that a portion of the submitted information is confidential under sections 771.061 and 772.118 of the Health and Safety Code. Section 771.061(a) of the Health and Safety Code makes confidential certain information that telephone companies and the United States Postal Service furnish a governmental entity that provides computerized 9-1-1 emergency services. *See generally* Open Records Decision No. 661 (1999). On the other hand, sections 772.118, 772.218, and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 9-1-1 callers furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). Based on your representation that the City of Mesquite is part of an emergency communication district that was established under section 772.118, we determine that the department must withhold all such telephone numbers and addresses contained in the submitted information pursuant to section 552.101 of the Government Code.

Finally, you assert that a portion of the submitted information is protected by privacy. Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *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. 540 S.W.2d at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: an individual's criminal history when

¹We note, however, that if the Texas Department of Family & Protective Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(g).

compiled by a governmental body, *see* Open Records Decision No. 565 (*citing United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)), personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have marked information in the submitted documents that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, we have marked information that is confidential under section 261.201 of the Family Code and must be withheld pursuant to section 552.101 of the Government Code. The department must withhold the originating telephone numbers and addresses of 9-1-1 callers furnished by a 9-1-1 service supplier in the submitted information pursuant to section 552.101 in conjunction with section 772.118 of the Health and Safety Code. We have marked information that the department must withhold under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining submitted information must be released to the requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 199352
Enc. Submitted documents

c: Ms. Brandi Kirby
141 English Crossing
Point, Texas 75472
(w/o enclosures)