



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2004

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

OR2004-8388

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# 210271.

The Mesquite Police Department (the "department") received a request for the "call sheet for report #04078913." You state that some responsive information will be provided to the requestor. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes, such as section 772.118 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Section 772.118 applies only to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). Section 772.118 makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. You inform us that the City of Mesquite is part of an emergency communication district established under section 772.118 of the Health and Safety Code. Based on this assertion, we conclude that

the originating telephone number that you have marked, as well as the originating address that we have marked, are confidential under section 772.118 and, thus, must be withheld pursuant to section 552.101 of the Government Code.¹

In addition, you claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy.² Information is protected from disclosure by the common-law right to privacy when it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983)*. In this instance, the requestor has a special right of access to her personal financial information pursuant to section 552.023 of the Government Code and it must be released. *See Gov't Code § 552.023* (person has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information).

You also claim that portions of the submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to: "(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; (2) a motor vehicle title or registration issued by an agency of this state; or (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document." *Gov't Code § 552.130(a)(1)-(3)*. We note, however, that the requestor has a special right of access to her own section 552.130 information. *See Gov't Code § 552.023*. We further note that the remaining information at issue in this ruling does not contain any information that is excepted under section 552.130. Accordingly, the department may not withhold any of the information at issue under section 552.130 of the Government Code.

In summary, the department must withhold the information that is marked pursuant to section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code. The remaining submitted information must be released to the requestor.

¹Because we reach this conclusion, we do not address your argument that this information is also confidential under section 771.061(a) of the Health and Safety Code.

²Section 552.101 also encompasses information that is protected from disclosure by the common-law right to 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 black ink, appearing to read "Cindy Nettles". The signature is fluid and cursive, with the first name "Cindy" written in a larger, more prominent script than the last name "Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 210271
Enc. Submitted documents

c: Ms. Susan Flynn
1552 Abilene Drive
Mesquite, Texas 75150
(w/o enclosures)