ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2005

Ms. Catherine C. Kemp
Records Supervisor
Rowlett Police Department
P.O. Box 370
Rowlett, Texas 75030-0370

OR2005-00393

Dear Ms. Kemp:

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# 216720.

The Rowlett Police Department (the "department") received a request for information concerning all calls to a specified address. You claim that 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." This section encompasses the common law right of privacy, which excepts from disclosure information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). 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.

Additionally, this office has found that the following types of information are excepted from required public disclosure under common law privacy: 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); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Further, where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989).

In this instance, the requestor asks the department for information concerning all calls to a specified address. As such, the request does not ask the department to compile records on any particular individual. Because the request does not implicate the privacy of any individual, we conclude that the privacy concerns expressed in *Reporters Committee* are not implicated by the request. Additionally, the submitted information does not contain highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person. Therefore, none of the information is confidential under common law privacy, and the department may not withhold any of the submitted information under section 552.101 on that ground.

Section 552.101 also encompasses information made confidential by other statues. In Open Records Decision No. 649 (1996), which interpreted section 772.318 of the Health and Safety Code, the Attorney General examined the applicability of several confidentiality provisions in chapter 772 of the Health and Safety Code to CAD reports for 9-1-1 calls made to a certain address. 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 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 and governed by subchapter B of chapter 772. Section 772.218 applies to emergency communication districts for counties with a population over 860,000 and governed by subchapter C of chapter 772. Section 772.318 applies to emergency communication districts for counties with a population over 20,000 and governed by subchapter D of chapter 772. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 9-1-1 telephone numbers and addresses. Health & Safety Code § 772.401, *et seq.*

You do not inform us which subchapter of chapter 772 governs the 9-1-1 emergency district at issue here. Thus, to the extent that the originating telephone numbers and addresses of the 9-1-1 callers were furnished by a service supplier, and assuming the emergency communication district here is subject to subchapter B, C, or D of chapter 772, the callers' addresses and originating telephone numbers are made confidential by the confidentiality provision in the applicable subchapter and must be withheld from public disclosure under section 552.101. If, on the other hand, the emergency communication district here is not subject to subchapter B, C, or D of chapter 772, or if the information was not furnished by

a service supplier, the callers' addresses and telephone numbers are not protected from disclosure under the chapter 772 confidentiality provisions. Furthermore, the information is not otherwise confidential by law. *See* Open Records Decision No. 611 (1992) (law enforcement records regarding family violence not generally excepted as matter of law under section 552.101 predecessor statute).

Section 552.130 provides in relevant part:

> (a) Information is excepted from the requirement of Section 552.021 if the information relates to:
>
> > (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
> >
> > (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the vehicle identification numbers, license plate numbers and related information that we have marked under section 552.130. As you make no other arguments against disclosure, the department must release the remaining submitted information to the requestor.

In summary, to the extent that the originating telephone numbers and addresses of 9-1-1 callers in the submitted information were furnished by a service supplier, and the emergency communication district at issue is subject to subchapter B, C, or D of chapter 772 of the Health and Safety Code, such addresses and originating telephone numbers are made confidential by law and must be withheld from public disclosure under section 552.101 of the Government Code. If, on the other hand, the emergency communication district here is not subject to subchapter B, C, or D of chapter 772, or if the information was not furnished by a service supplier, the callers' addresses and telephone numbers are not protected from disclosure under the chapter 772 confidentiality provisions and they must be released. You must withhold the information we have marked under section 552.130 of the Government Code. All 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).

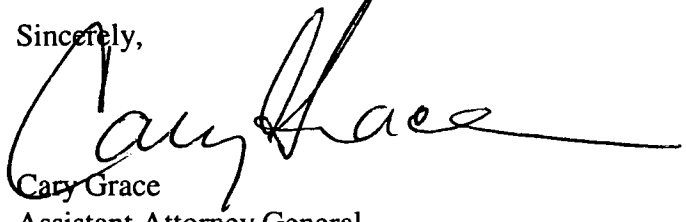
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 216720

Enc. Submitted documents

c: Mr. Richard Parks
302 Pointe Royal
Rockwall, Texas 75087
(w/o enclosures)