



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 31, 2005

Mr. John T. Patterson
Assistant City Attorney
City of Waco
P. O. Box 2570
Waco, Texas 76702-2570

OR2005-04703

Dear Mr. Patterson:

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# 225283.

The Waco Police Department (the "department") received a request for a specified offense report and information related two 9-1-1 calls. You claim that portions of the requested information are 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that another statute makes confidential. You have highlighted information in Exhibit 5 that you contend is excepted under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.¹ Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency communications district established in accordance with chapter 772, and provides in part:

¹While you cite to section 772.218 of the Health and Safety Code in your comments to this office, we understand you to assert that 772.318 is applicable to the information. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. See Health & Safety Code § 772.304. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. See *id.* § 772.204.

(a) As part of a computerized 9-1-1 service, a service supplier shall furnish current telephone numbers of subscribers and the addresses associated with the numbers on a call-by-call basis.

...

(c) Information furnished under this section is confidential and is not available for public inspection.

Health & Safety Code § 773.318(a), (c). You indicate that the City of Waco is part of an emergency communication district that was established under section 772.318. Based on your representations and our review, we determine that the addresses and telephone numbers you have highlighted in Exhibit 5 are excepted from public disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. *See* Open Records Decision No. 649 (1996).

Next, you claim that some of the information in Exhibits 3 and 4 is protected by common-law privacy. Common-law privacy, which is also encompassed by section 552.101, protects information if 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. *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 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 agree that some information contained in Exhibit 3 as well as the information you seek to withhold in Exhibit 4 implicates individuals' common-law privacy rights. We note, however, that section 552.023 of the Government Code provides that a person or a person's authorized representative has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. *See* Gov't Code § 552.023. We have marked the information in Exhibit 3 that implicates the

privacy rights of individuals other than the requestor. The department must withhold this marked information in Exhibit 3 under section 552.101 in conjunction with common-law privacy. The department must also withhold the private information contained in Exhibit 4 on this basis.

Next, you note that the social security number in Exhibit 3 may be excepted under section 552.101 in conjunction with federal law. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in the file is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

We now address your claim under section 552.130 of the Government Code. This section provides in relevant part as follows:

(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[.]

Gov't Code § 552.130(a)(1), (2). Thus, the department must withhold the Texas driver's license number in Exhibit 3 pursuant to section 552.130.

Lastly, we note that Exhibit 3 contains e-mail addresses that are subject to section 552.137 of the Government Code. This section excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). We have

marked the e-mail addresses in Exhibit 3 that must be withheld under section 552.137 unless their owners have affirmatively consented to their release. *See* Gov't Code § 552.137(b).

In summary: (1) the originating addresses and telephone numbers of 9-1-1 calls in Exhibit 5 must be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code; (2) the department must withhold the information we have marked in Exhibit 3 and the private information in Exhibit 4 under section 552.101 in conjunction with common-law privacy; (3) the social security number in Exhibit 3 may be confidential under federal law; (4) the Texas driver's license number in Exhibit 3 must be withheld under section 552.130 of the Government Code; (5) the e-mail addresses we have marked in Exhibit 3 must be withheld under section 552.137 of the Government Code unless their owners have affirmatively consented to their release; and (6) the remaining submitted information must be released.²

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

²Because some of the information may be confidential with respect to the general public, if the department receives a future request for this information from a person other than the requestor or her authorized representative, the department should again seek our decision.

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); *Tex. 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,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krf

Ref: ID# 225283

Enc. Submitted documents

c: Ms. Karen L. Campbell
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Waco, Texas 76712
(w/o enclosures)