



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 19, 2005

Mr. Steven M. Kean  
Deputy City Attorney  
City of Tyler Legal Department  
P. O. Box 2039  
Tyler, Texas 75710

OR2005-11400

Dear Mr. Kean:

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# 238451.

The Tyler Police Department (the "department") received a request for information relating to 9-1-1 calls involving a specified address and person. You state that the department has released most of the requested information. You claim that the remaining 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.<sup>1</sup>

Initially, we note that the submitted documents include an ST-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). 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

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

confidential by other statutes. Gov't Code § 552.101. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). In this case, however, the requestor has not provided the department with the required two pieces of information specified by the statute. Accordingly, the ST-3 accident report in the submitted documents is confidential under section 552.065(b) of the Transportation Code and must be withheld under section 552.101.

Section 552.101 also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Although you indicate that the submitted information contains criminal history information that is confidential under chapter 411, upon review we find that none of the submitted information constitutes CHRI for the purposes of chapter 411.

You assert that the submitted addresses of 9-1-1 callers may be confidential under section 771.061 of the Health and Safety Code. Section 771.061 makes confidential "[i]nformation that a service provider of telecommunications service is required to furnish to a governmental entity in providing computerized 9-1-1 service" and "[i]nformation that is contained in an address database maintained by a governmental entity or a third party used in providing computerized 9-1-1 service." Health & Safety Code § 771.061(a). You have marked information that you claim is confidential under section 771.061(a). We agree that to the extent the remaining documents relate contain information that was required to be furnished to the department by a telecommunications service provider or is contained in an address database used in providing computerized 9-1-1 service, the information is confidential under section 771.061 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. *See also* Open Records Decision No. 661 at 1-2 (1999). However, information in the remaining documents that was not required to be furnished to the department by a telecommunications service provider and is not contained in an address database used in providing computerized 9-1-1 service is not confidential under 771.061. To the extent that the remaining documents contain information that is confidential under 771.061, such information must be withheld from disclosure under section 552.101 of the Government Code.

Additionally, you claim that this information is made confidential under section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the

development of local emergency communications districts. Section 772.318 of the Health and Safety Code applies only to an emergency 9-1-1 district established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Therefore, if the department is part of an emergency communication district established under section 772.318, the 9-1-1 callers' originating addresses are excepted from public disclosure based on section 552.101 as information deemed confidential by statute.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information that (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). 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). Upon review, we have marked the information that must be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 excepts information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title, registration, or identification number. Gov't Code § 552.130. The department must withhold the information it has marked under section 552.130 of the Government Code. We have marked additional Texas motor vehicle information that the department must withhold under section 552.130.

We note that the remaining submitted information contains social security numbers. Section 552.147 of the Government Code<sup>2</sup> provides that "[t]he social security number of a

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<sup>2</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147).

living person is excepted from" required public disclosure under the Act. Therefore, the department must withhold the social security numbers we have marked in the submitted information under section 552.147.<sup>3</sup>

In summary, we conclude that: 1) the department must withhold the submitted accident report pursuant to section 552.101 in conjunction with 550.065(c) of the Transportation Code; 2) if the department provides a computerized 9-1-1 service, and to the extent that the submitted information was required to be furnished to the department by a telecommunications service provider or is contained in an address database used in providing computerized 9-1-1 service, any such information must be withheld under section 552.101 of the Government Code in conjunction with section 771.061 of the Health and Safety Code; 3) if the department is part of an emergency communication district established under section 772.318 of the Health and Safety Code, the 9-1-1 callers' originating addresses must be withheld under section 552.101 of the Government Code; 4) the information we have marked must be withheld under section 552.101 in conjunction with common-law privacy; 5) the department must withhold the Texas motor vehicle record information that you have highlighted and we have marked pursuant to section 552.130 of the Government Code; and 6) the social security numbers must be withheld in accordance with section 552.147 of the Government Code. The remainder of the submitted information must be released.

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

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<sup>3</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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).

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 Office of the Attorney General 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. 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,



Brian J. Rogers  
Assistant Attorney General  
Open Records Division

BJR/krl

Ref: ID# 238451

Enc. Submitted documents

c: Ms. Inga McGruder  
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(w/o enclosures)