



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2005

Mr. Miles K. Risley
Senior Assistant City Attorney
City of Victoria Legal Department
P.O. Box 1758
Victoria, Texas 77902-1758

OR2005-11761

Dear Mr. Risley:

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# 239240.

The City of Victoria (the "city") received a request for (1) dispatch records for calls received on a certain date and (2) records reflecting that an investigator notified the Victoria Police Department that he was investigating residents at a certain address or a named individual during a certain time period. You state that some of the submitted information is 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 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 protected by other statutes. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). We understand you to represent that the city is part of an emergency communication district that was established

under section 772.318.¹ Thus, we conclude that, to the extent that the submitted originating telephone number of a 9-1-1 caller was supplied by a 9-1-1 service, it must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy protects two kinds of interests. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the “zones of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. See *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); Open Records Decision No. 455 at 3-7 (1987). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See Open Records Decision No. 455 at 6-7 (1987); *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985). This aspect of constitutional privacy balances the individual’s privacy interest against the public’s interest in the information in question. See Open Records Decision No. 455 at 7 (1987). Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 8; *Ramie*, 765 F.2d at 492. In this instance, the submitted audio recording contains information that the city must withhold pursuant to section 552.101 in conjunction with constitutional privacy. In the event that the city does not have the technological capability to redact such information from the audio recording, we conclude that the city must withhold the audio recording in its entirety.

We note that the remaining information contains a Texas driver’s license number. Section 552.130 of the Government Code excepts from public disclosure information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]”² Gov’t Code § 552.130(a)(1). Accordingly, the city must withhold the Texas driver’s license number we have marked pursuant to section 552.130.

In summary, to the extent that the submitted originating telephone number of a 9-1-1 caller was supplied by a 9-1-1 service, it must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The city must withhold the confidential information in the submitted audio recording pursuant to section 552.101 of the Government Code in conjunction with constitutional privacy; however, in the event that the city does not have the technological capability to

¹Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

² This office will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

redact such information from the audio recording, the city must withhold the audio recording in its entirety. The Texas driver's license number we have marked must be withheld under section 552.130 of the Government Code. The remaining 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 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,

A handwritten signature in black ink, appearing to read 'Caroline E. Cho', with a long, sweeping underline.

Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 239240

Enc. Submitted documents

c: Ms. Sandra McKenzie
205 South Main
Victoria, Texas 77901
(w/o enclosures)