



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2007

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

OR2007-00017

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# 268184.

The Mesquite Police Department (the "department") received four requests from two requestors for police reports and call sheets for three specified addresses during specific time periods. You state that the department has released some of the requested information. You inform us that you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ We note, however, that one of the social security numbers belongs to one of the requestors. Because section 552.147 is intended to protect the privacy interests of individuals, that requestor has a right of access to her own social security number under section 552.023 of the Government Code, and it may not be withheld from her under section 552.147. *See id.* § 552.023 (person or person's authorized representative has special right of access to information excepted from public disclosure under laws intended to protect that person's privacy interest). You claim that portions of the submitted 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.

¹Section 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.

First, we address the department's obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state its claimed exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. – Austin 1990, no writ).

The department states that it received three requests from the first requestor on October 4, 2006; however, the department did not request a ruling from this office until October 19, 2006. Because the department did not request this decision within the ten-business-day period prescribed by section 552.301(b), the submitted information is presumed to be public under section 552.302. This statutory presumption can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because your claims under sections 552.101 and 552.130 of the Government Code can provide compelling reasons for non-disclosure, we will address those exceptions.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, including confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Some of the submitted information involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the information we have marked is confidential pursuant to section 58.007(c) of the Family Code, and must be withheld from disclosure under section 552.101 of the Government Code.

Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218 and 772.318 are applicable to emergency 911 districts established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 911 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. We understand you to assert that the City of Mesquite is part of an emergency communication district established under section 772.118. You indicate that the addresses and telephone numbers that you have marked in Exhibit 5 are those of 911 callers that were furnished by a 911 service supplier. Based on your representations and our review, we agree that the department must withhold the marked addresses and phone numbers of 911 callers in Exhibit 5 under section 552.101 in conjunction with section 772.118 of the Health and Safety Code.²

Section 552.101 also encompasses the doctrine of common law privacy, which 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 types 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. *Id.* at 683. 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). In addition, a compilation of an individual's criminal history is highly embarrassing information, the publication of which

²As we are able to make this determination, we do not address your claim under section 771.061 of the Health and Safety Code.

would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history).

The department must withhold the information we have marked under section 552.101 of the Government Code and the doctrine of common law privacy. We note, however, that one of the requestors is an individual whose information is at issue. Thus, the information you have marked must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy except for the information pertaining to that individual, in which case it must be released to her. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles).

You also raise section 552.130 of the Government Code. This section 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 or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). Therefore, the Texas driver's license and motor vehicle information that you have marked in Exhibit 5 is excepted from public disclosure under section 552.130. We note, however, that the requestor whose Texas motor vehicle record information is at issue has a special right of access to such information. *See* Gov't Code § 552.023.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold the marked addresses and phone numbers of 911 callers in Exhibit 5 under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code. The information you have marked must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy except for the information pertaining to one of the requestors, which must be released to her. The department must also withhold the Texas driver's license and motor vehicle information that you have marked in Exhibit 5 under section 552.130 of the Government Code, except for the information pertaining to one of the requestors, which must be released to her. The remaining information must be released to the requestors.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/eb

Ref: ID# 268184

Enc. Submitted documents

c: Ms. Barbara Fitzhugh
P.O. Box 851689
Mesquite, Texas 75185
(w/o enclosures)

Ms. Cheryl Tolbert
857 Via Altos
Mesquite, Texas 75150
(w/o enclosures)