



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 30, 2007

Ms. Katherine Powers
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2007-06778

Dear Ms. Powers:

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# 283918.

The Dallas Police Department (the "department") received a request for information related to law enforcement at a specified address from 2006 until the date of the request. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 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." This section encompasses information protected by other statutes. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts.

Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply 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 772.118 applies to emergency communication districts for counties with a population over two million. We understand you to assert that the emergency communication district

here is subject to section 772.118. Therefore, to the extent the originating telephone numbers of the 9-1-1 callers you have marked were supplied by a 9-1-1 service supplier, this information is confidential under section 772.118 of the Health and Safety Code and must be withheld from disclosure under section 552.101 of the Government Code; however, if this information was not provided by a 9-1-1 service supplier to the emergency communication district, this information may not be withheld under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code.

Section 552.101 also encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The common-law right to privacy encompasses the types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). We have marked the information that implicates an individual's common-law privacy interests. The department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The remaining information may not be withheld on this basis.

Section 552.108(a)(1) of the Government Code excepts from public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). You state that the incident reports you have marked relate to pending criminal cases. Based on your representation, we conclude that section 552.108(a)(1) is applicable to this information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The department must release basic information, including detailed descriptions of the offense, even if the information does not literally appear on the front page of the report. *See Open Records Decision No. 127* at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the reports that you have marked under section 552.108 of the Government Code.

In summary, to the extent the telephone numbers that you have marked were supplied by a 9-1-1 service supplier, they are confidential under section 772.118 of the Health and Safety Code and must be withheld from disclosure under section 552.101 of the Government Code. The information we have marked must be withheld under section 552.101 in conjunction with common-law privacy. Other than basic information, the department may withhold the reports that you have marked under section 552.108(a)(1) of the Government Code. The remaining information must be released to the requestor.

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 cursive script that reads "L. Joseph James".

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/eeg

Ref: ID# 283918

Enc. Submitted documents

c: Mr. Roger Albright
3301 Elm Street
Dallas, Texas 75226
(w/o enclosures)