



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2007

Ms. Kelly E. Pagan
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2007-15098

Dear Ms. Pagan:

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# 294784.

The City of Fort Worth (the "city") received a request for 9-1-1 calls made between 6:00 p.m. on August 20, 2007 and 3:00 a.m. on August 21, 2007. You claim that some of the requested 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 of the Government Code 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 made confidential 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 are applicable to emergency 9-1-1 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 9-1-1 service provider confidential. *Id.* at 2. Section 772.118 applies to an emergency communications district for a county with a population of more than two million. Section 772.218 applies to an emergency communications district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communications district for a county with a population of more than 20,000.

You state that the city is part of an emergency communications district established under section 772.218. Based on your representations and our review, we determine that the originating telephone numbers and addresses of the 9-1-1 callers, which you have highlighted, are confidential under section 772.218 of the Health and Safety Code, and the

city must withhold this information under section 552.101 of the Government Code. You also request that the same information be withheld from the audio recordings of these calls. We have indicated which originating telephone number in the submitted audio recording the city must withhold. However, we find that the remaining telephone number and the addresses on the audio recording were furnished by the callers, not the service provider. Thus, no portion of the remaining information on the submitted compact disc is confidential under section 772.218 and may not be withheld under section 552.101 of the Government Code on this basis.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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. *Id.* at 683. You claim that portions of the submitted documents and compact disc must be withheld under section 552.101 in conjunction with common-law privacy. Based on your arguments and our review, we determine that a portion of the submitted information contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We have also indicated which information in the submitted audio recording must be withheld under section 552.101 and common-law privacy. However, you have failed to establish that any part of the remaining information you have marked is highly intimate and embarrassing and of no legitimate public concern. Thus, common-law privacy is not applicable to the remaining information that you have marked and it may not be withheld under section 552.101 on that basis.

In summary, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. The city must also withhold the information we have marked in the submitted documents and audio recording under section 552.101 of the Government Code in conjunction with common-law privacy. If the city lacks the technical capability to redact this information from this audio recording, then the city must withhold the audio recording in its entirety. 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 294784

Enc. Submitted documents

c: Mr. Keith Applewhite
833 Hill Place
Azle, Texas 76020
(w/o enclosures)