



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2008

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2008-09512

Dear Mr. Phillips:

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# 315492.

The City of Fort Worth (the "city") received a request for a specified incident report and all 9-1-1 calls made to a specified address. You state that the city will withhold Texas motor vehicle record information pursuant to previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You claim that 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 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 the common-law right of privacy, which protects information if it (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.

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual at issue and the nature of the incident, the entire report must be withheld to protect the individual's privacy. In this instance, the submitted information reveals that the requestor knows the identity of the individual involved as well as the nature of the information in incident report number 08-43854 and calls for service report number 081080808. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom incident report number 08-43854 and calls for service report number 081080808 relates, the city must withhold these reports in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Although you also seek to withhold calls for service report number 081082196 in its entirety, you have not demonstrated, nor does it otherwise appear, that this is a situation where the entire report must be withheld on the basis of common-law privacy. However, we agree that portions of calls for service report number 081082196 are highly intimate and not of legitimate public interest. Accordingly, the city must withhold the information we have marked in calls for service report number 081082196 under section 552.101 in conjunction with common-law privacy.

You claim that some of the remaining information in calls for service report number 081082196 is excepted from under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety 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 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 9-1-1 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. You explain that the telephone number you have highlighted in calls for service report number 081082196 was furnished by a 9-1-1 service provider. Upon review, we find that this information is 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.

In summary, the city must withhold incident report number 08-43854 and calls for service report number 081080808 in their entirety and the information we have marked in calls for service report number 081082196 under section 552.101 in conjunction with common-law

privacy. The department also must withhold the telephone number you have highlighted in calls for service report number 081082196 under section 552.101 in conjunction with section 772.218 of the Health and Safety Code. The remaining information must be released to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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 "Amy Shipp", written in a cursive style.

Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mcf

Ref: ID# 315492

Enc. Submitted documents

c: Mr. Michael Jones
16713 Woodside Drive
Justin, Texas 76247
(w/o enclosures)