



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2008

Ms. Cheryl K. Byles
Assistant City Attorney
Fort Worth Police Department
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2008-11446

Dear Ms. Byles:

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# 319427.

The Fort Worth Police Department (the "department") received a request for twenty-three categories of information pertaining to a specified incident, including information related to the 9-1-1 call. We understand that you have redacted Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the 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.

Initially, we note that you have only submitted information pertaining to the 9-1-1 call for our review. To the extent any additional responsive information existed on the date the department received this request, we assume you have released it to the requestor. If you have not released any such information, you must release it at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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. Section 552.101 encompasses other statutes, including chapter 772 of the Health and Safety Code, which 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 772.218 applies to an emergency communication district for a county with a population of more than 860,000.

You state that the city is part of an emergency communications district established under section 772.218. You explain that the address that you have marked was furnished by a 9-1-1 service provider. Based on your representations, we conclude that the department must withhold the address you have marked on the submitted 9-1-1 call sheet under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. You have also submitted a compact disc ("CD") containing an audio recording of a 9-1-1 call concerning this incident. The department must withhold the originating address that is contained in the submitted recording on the same basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. See Open Records Decision No. 545 (1990). The department must withhold the information that we have marked under section 552.101 in conjunction with common-law privacy. We note, however, that if the requestor in this instance is the attorney for the individual to whom the information at issue pertains, he has a special right of access to such information under section 552.023 of the Government Code. 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).

We note that the submitted documents contain unredacted information subject to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

state. Gov't Code § 552.130(a)(2). We note that section 552.130 protects personal privacy. Therefore, the department must withhold the information we have marked under section 552.130, unless the requestor is the attorney for the individual to whom the information pertains.

In summary, the department must withhold the address you have marked on the submitted 9-1-1 call sheet, as well as the originating address that is contained in the submitted recording, under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. The department must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information we have marked under section 552.130 of the Government Code, unless the requestor is the individual's attorney. 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,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/mcf

Ref: ID# 319427

Enc. Submitted documents

c: Mr. Domingo Garcia
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(w/o enclosures)