



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 28, 2008

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

OR2008-14624

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# 325766.

The City of Fort Worth (the "city") received a request for the 9-1-1 calls and police reports for a specified address. You claim that portions of the submitted information are 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 refer us to a 9-1-1 recording that you claim contains confidential information, however, you have not submitted the recording for our review. Because you have not submitted the recording for our review, we find that you have failed to comply with section 552.301 with respect to this information. *See* Gov't Code § 552.301(e)(1)(D). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a compelling reason to withhold information exists where some other source of law makes the

information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977).

The city raises section 552.101 of the Government Code for the recording. Section 552.101 can provide a compelling reason for non-disclosure under section 552.302. However, because the city has not submitted the recording for our review, we have no basis for finding it confidential. Therefore, we have no choice but to order the city to release the recording. If you believe that the recording is confidential and may not lawfully be released, then you must challenge this ruling in court as outlined below.

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 section 261.201(a) of the Family Code, which provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Report 08-16446 involves an investigation of a terroristic threat. You have not explained, nor does the submitted report reflect, how it was used or developed in an investigation by the city's police department of alleged child neglect for purposes of chapter 261. *See id.* § 261.001(4) (defining "neglect" for purposes of chapter 261 of the Family Code). Further, you do not provide a representation from another investigating agency that these documents were used by that agency in a child neglect investigation under chapter 261. *See id.* § 261.103 (listing agencies that may conduct child neglect investigations). Thus, the department has not established that section 261.201 is applicable to report 08-16446. Accordingly, the city may not withhold this report under section 552.101 in conjunction with section 261.201 of the Family Code. As you have raised no other exceptions to disclosure, report 08-16446 must be released.

Section 552.101 also 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 9-1-1 callers that are furnished by a service supplier 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 inform us that the City of Fort Worth is part of an emergency communication district established under section 772.218 of the Health and Safety Code. You also state that the telephone numbers you have marked in the submitted 9-1-1 call sheet were provided by a 9-1-1 service supplier. Based on your representations and our review, we conclude that the city must withhold the telephone numbers you have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

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). In this instance, you claim that report 06-33981 should be withheld in its entirety on the basis of common-law privacy. Generally only in instances of sexual assault or attempted suicide, where it is demonstrated that the requestor knows the identity of the victim, as well as the nature of the incident, must the entire report be withheld to protect the victim's privacy. Here, although you seek to withhold the submitted report in its entirety, you have not demonstrated, nor does the report reflect, a situation in which the entire report must be withheld on the basis of common-law privacy. However, a portion of the submitted information does contain medical information. This office has found that medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. See Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we have marked the information that is both highly intimate or embarrassing and not of legitimate public interest. The city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note you have redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to previous determinations issued to the City of Fort Worth 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). Section 552.130 of the Government Code excepts from public disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. We note, however, that section 552.130 protects an individual's privacy interests. A portion of the Texas motor vehicle information you have marked pertains to a vehicle that belongs to the requestor. Because this information belongs to the requestor, it may not be withheld in this instance. See *id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to

person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). You have also marked Texas driver's license information not belonging to the requestor. This information must be withheld under section 552.130. We have identified the information the city must withhold under section 552.130.

In summary, the city must withhold the marked telephone numbers in the 9-1-1 call sheets under section 552.101 in conjunction with 772.218 of the Health and Safety Code. The city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. We have identified the information the city must withhold under section 552.130. The remaining information must be released.¹

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).

¹You inform us that you have redacted social security numbers under section 552.147 of the Government Code. Section 552.147(b) authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office under the Act.

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/jb

Ref: ID# 325766

Enc. Submitted documents

c: Ms. Tiffany Johnson
5729 Rockhill Road
Fort Worth, Texas 76112
(w/o enclosures)