



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2008

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road Suite 800
Richardson, Texas 75081

OR2008-15837

Dear Mr. Griffith:

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# 328057.

The Town of Flower Mound (the "town"), which you represent, received a request for records of 911 calls and any other information relating to certain addresses and named individuals during a specified time interval. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

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. You raise section 552.101 in conjunction with 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered to be intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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 involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

We find that you have not demonstrated that the information in two of the submitted audio recordings is intimate or embarrassing and not a matter of legitimate public interest. We therefore conclude that the town may not withhold any of that information under section 552.101 in conjunction with common-law privacy. The present request reflects, however, that the requestor knows the identity of the individual involved in the remaining information at issue, as well as the nature of that information. Thus, withholding only the identity of the individual involved or certain details of the incidents from the requestor would not preserve the common-law privacy right of the individual involved. We therefore conclude that the submitted post-run/call report and audio recordings relating to call for service ("CFS") numbers 08-007781 and 08-032326 are protected by common-law privacy in their entirety.

We note, however, that the requestor may be an authorized representative of the individual whose right to privacy is involved. In the event that the requestor is that individual's authorized representative, then he has a special right of access to her private information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a).¹ If the requestor has a right of access under section 552.023, then the town may not withhold any of the information in the post-run call report and audio recordings relating to CFS numbers 08-007781 and 08-032326 on privacy grounds under section 552.101. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). If the requestor is not the individual's authorized representative, then the post-run call report and audio recordings relating to CFS numbers 08-007781 and 08-032326 must be withheld in their entirety under section 552.101 in conjunction with common-law privacy.²

Because we unable to conclude whether the town must withhold any of the submitted information under section 552.101 and common-law privacy, we must also address your other arguments against disclosure. Section 552.101 also encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with sections 772.118, 772.218 and 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 are applicable to emergency 911 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 service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million.

¹Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

²We note that the records in question also contain information relating to medications that is protected by common-law privacy. The requestor would also have a right of access to that information, however, if he is the individual's authorized representative.

Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

You indicate that the post-run/call report contains a telephone number and address of a 911 caller that were furnished by a service supplier. You do not inform us, however, whether the town is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. Nevertheless, if the town is part of an emergency communication district established under one of these sections, then the town must withhold the telephone number and address of the 911 caller contained in the post-run/call report under section 552.101. If the town is not subject to section 772.118, section 772.218, or section 772.318, then the town may not withhold any information in the call report under section 552.101 on the basis of section 772.118, section 772.218, or section 772.318. In either event, these sections are applicable only to information furnished by a 911 service supplier. See ORD 649 at 3 (language of confidentiality provision controls scope of its protection). Thus, because the information in the submitted recordings of 911 calls was furnished by the 911 callers themselves, the town may not withhold any of that information under section 552.101 in conjunction with section 772.118, section 772.218, or section 772.318. *Id.*

You also raise section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(2) is applicable only if the information in question is related to concluded cases that did not result in a conviction or a deferred adjudication.

You state that the submitted information is related to instances in which no charges were filed. Based on your representations, we conclude that section 552.108(a)(2) is generally applicable to the submitted information. Therefore, if the submitted post-run/call report and audio recordings relating to CFS numbers 08-007781 and 08-032326 are not excepted from disclosure under section 552.101 in conjunction with common-law privacy, then the town may withhold the audio recordings and most of the information in the report under section 552.108(a)(2). The town also may withhold the other two audio recordings on that same basis.

We note that 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 Publishing 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). See 531 S.W.2d at 186-88. The town must

release basic information with respect to the post-run/call report, even if the information does not literally appear on the front page of an offense or arrest report.³ See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

In summary, the town must withhold the post-run/call report and audio recordings relating to CFS numbers 08-007781 and 08-032326 in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy, unless the requestor has a right of access to that information under section 552.023 of the Government Code. If the requestor has a right of access to that information, then (1) the town must withhold the telephone number and address of the 911 caller contained in the post-run/call report under section 552.101 if the town is part of an emergency communication district established under sections 772.118, 772.218, or 772.318 of the Health and Safety Code; and (2) the town may withhold the post-run/call report and audio recordings relating to CFS numbers 08-007781 and 08-032326 under section 552.108(a)(2) of the Government Code, except for basic information in the report that the town must release under section 552.108(c). In any event, the town may withhold the other two audio recordings under section 552.108(a)(2).⁴

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

³We note that the town would also be required to withhold some of the basic information in the call report from the public on privacy grounds. However, the requestor would also have a right of access to that information if he is the authorized representative of the individual to whom the information pertains. See Gov't Code § 552.023(a); ORD 481 at 4.

⁴As we are able to make these determinations, we do not address section 552.108(b)(2).

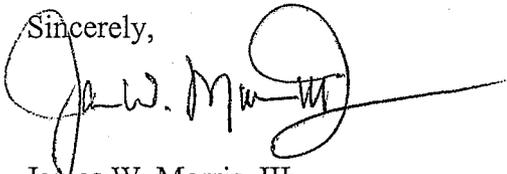
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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 "James W. Morris, III". The signature is stylized with a large, circular flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jh

Ref: ID# 328057

Enc: Submitted information

c: Requestor
(w/o enclosures)