



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 22, 2009

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2009-05329

Dear Ms. Middlebrooks:

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# 340398 (DPD information request no. 09-0802).

The Dallas Police Department (the "department") received a request for police report number 09-0127733, all 9-1-1 calls from a specified address during a specified time period, and any reports naming the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the representative sample submitted by the department only contains information responsive to the first two categories of the request, and does not include information representative of the portion of the request seeking any reports involving the requestor. As you have not submitted this information for our review, we assume you have released it to the extent that it existed on the date the department received this request. If you

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

have not released this additional information, then you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302.

We additionally note that a portion of the call for service log that you have submitted does not pertain to the specified address. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release this information, which we have marked, in response to this request.²

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 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. This office has also found that some kinds of 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). Accordingly, we have marked the information in report number 09-0127733 that is confidential under common-law privacy and that the department must withhold under section 552.101.

We note that the remaining submitted report pertains to an alleged sexual assault. Generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy; however, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decisions Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986). In this instance, the submitted information indicates that the requestor knows the identity of the alleged victim in the incident at issue. 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 the information relates, the department must withhold the remaining submitted report in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

²As our ruling is dispositive with respect to this information, we need not address your argument under section 552.130.

Section 552.101 also encompasses information protected by other statutes. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). We understand that the City of Dallas is within an emergency communication district that is subject to section 772.318. You claim that the address and telephone numbers you have marked are confidential under section 772.318 of the Health and Safety Code. Upon review, we conclude the department must withhold the address and telephone information submitted for our review to the extent they were furnished by a 9-1-1 service supplier. If the address and telephone numbers at issue were not provided by a 9-1-1 service supplier, this information may not be withheld under section 552.101 in conjunction with section 772.318.

In summary, the department must withhold the portions of report number 09-0127733 we have marked under section 552.101 in conjunction with common-law privacy. The department must withhold the remaining submitted incident report in its entirety under section 552.101 in conjunction with common-law privacy. The department must also withhold the submitted address and phone numbers under section 552.101 in conjunction with section 772.318 of the Health and Safety Code to the extent they were furnished by a 9-1-1 service supplier. The remaining responsive information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 340398

Enc. Submitted documents

cc: Requestor
(w/o enclosures)