



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 24, 2009

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

OR2009-05454

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# 340864 (PIR# 277).

The Town of Flower Mound (the "town"), which you represent, received a request for a specified incident report. 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 submitted information.

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 a closed case in which no charges were filed. Based on your representation, we conclude that section 552.108(a)(2) is generally applicable to the submitted information.

We note, however, that basic information, which is normally found on the front page of an offense report, is generally considered public and not excepted from disclosure pursuant to section 552.108(c). Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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 also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In Open Records Decision No. 649 at 3 (1996), this office concluded that information contained in Computer-Aided Dispatch (“CAD”) reports is substantially the same as basic information specifically held to be public in *Houston Chronicle* and therefore is not excepted from public disclosure under section 552.108. *See also* Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in police dispatch records or radio logs and front page offense report information expressly held to be public in *Houston Chronicle*, and thus, such information is generally public). The submitted information contains a computer-aided dispatch report; therefore, as basic information, this report cannot be withheld under section 552.108 of the Government Code. The town may withhold the remaining submitted information under section 552.108(a)(2).¹ We will address your remaining exceptions for the dispatch report.

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 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 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 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. 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 dispatch report contains the originating 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, to the extent the telephone number and address of the 9-1-1 caller

¹As our ruling is dispositive for this information, we need not address your remaining arguments.

was supplied by a 9-1-1 service supplier, the town must withhold the telephone number and address of the 9-1-1 caller contained in the dispatch report under section 552.101. If the town is not subject to section 772.118, section 772.218, or section 772.318, or if the telephone number and address of the 9-1-1 caller was not supplied by a 9-1-1 service supplier, then the town may not withhold any information in the dispatch report under section 552.101 on the basis of section 772.118, section 772.218, or section 772.318.

You also raise section 552.101 in conjunction with 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. Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the town must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. No part of the remaining information is protected under common-law privacy, and it may not be withheld on that basis.

In summary, with the exception of the dispatch report, the town may withhold the submitted information under section 552.108(a)(2) of the Government Code. 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, then, to the extent the telephone number and address of the 9-1-1 caller was supplied by a 9-1-1 service supplier, the town must withhold the telephone number and address of the 9-1-1 caller contained in the dispatch report under section 552.101 of the Government Code. The town must withhold the information we have marked in the dispatch report under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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,

A handwritten signature in cursive script that reads "Jonathan Miles".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/eeg

Ref: ID# 340864

Enc. Submitted documents

c: Requestor
(w/o enclosures)