



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 13, 2009

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Section
1400 South Lamar
Dallas, Texas 75215

OR2009-16164

Dear Ms. McClellan:

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# 361295 (DPD Request No. 2009-3824).

The Dallas Police Department (the "department") received a request for two specified incident reports. You claim that portions of the requested 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.

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. This section encompasses information protected by other statutes, including chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication 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 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.

We understand the city of Dallas is part of an emergency communication district established under section 772.318. You have marked the telephone number of a 9-1-1 caller that the department seeks to withhold. We conclude the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code to the extent it was furnished by a 9-1-1 service supplier. If the marked telephone number was not provided by a 9-1-1 service supplier, the marked information may not be withheld under section 552.101 in conjunction with section 772.318.

Section 552.101 also encompasses common-law privacy and excepts from disclosure private facts about an individual. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information is excepted from required public disclosure by a common-law right of privacy if the information (1) 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. *Id.* at 685. The types 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. We find that the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, this information is generally confidential under common-law privacy.

We note, however, the requestor is the spouse of the individual whose private information is at issue. Under section 552.023 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. If the requestor is the individual's authorized representative, then he has a right of access to her private information, and that information may not be withheld from this requestor under section 552.101 in conjunction with common-law privacy. If the requestor is not the individual's authorized representative, then the department must withhold the information you have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the marked telephone number was furnished by a 9-1-1 service supplier it must be withheld under section 552.101 in conjunction with section 772.318. If the requestor is not the individual's authorized representative, then the department must withhold the information you have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.¹

¹In this instance, the requestor may have a special right of access under section 552.023 to the information being released. If the department receives another request for this same information from an individual who does not have a right of access to the information, the department should resubmit the

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, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 361295

Enc. Submitted documents

c: Requestor
(w/o enclosures)