



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2009

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

OR2009-17059

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# 362859 (Dallas Request No. 2009-6736).

The Dallas Police Department (the "department") received a request for calls and reports made by a named individual during a specified time period. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the department failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. *See* Gov't Code § 552.301(b), (e). 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. *See id.* § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.*; *see also City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to withhold information, we will consider whether any of the information at issue must be withheld under these exceptions.

Section 552.101 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 the common-law right to privacy, which 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. 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. *See* 540 S.W.2d at 683. This office has also found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find that the information we have marked is excepted from disclosure under common-law privacy. However, we note the requestor is the son of the individual whose private information is at issue and the submitted information indicates he may be an authorized representative of his father. Thus, if the requestor is an authorized representative of the individual concerned, then the requestor has a right of access to information pertaining to this individual that would ordinarily be confidential under section 552.101 in conjunction with common-law privacy. Section 552.023 of the Government Code 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.” *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, if the requestor is the authorized representative of the individual concerned, then the department may not withhold the marked information from the requestor on the basis of common-law privacy. If the requestor is not the individual’s authorized representative, then the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses 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 communications districts. Sections 772.118, 772.218, and 772.318 apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. You indicate the information you have marked was furnished by a 9-1-1 service supplier to a 9-1-1 district that is subject to section 772.318. Accordingly, the department must withhold the marked telephone numbers and addresses under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.130 of the Government Code exempts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code § 552.130(a)(1), (2)*. You have marked Texas motor vehicle record information pursuant to section 552.130. However, we note section 552.130 protects privacy interests. If the requestor is the authorized representative of the individual to whom the motor vehicle record information pertains, the department may not withhold this information under section 552.130 from the requestor. If the requestor is not the authorized representative of the individual concerned, the department must withhold the information you have marked, as well as the information we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy, and the marked information under section 552.130 of the Government Code; however, if the requestor is the authorized representative of the individual to whom this information pertains, the department must release this information to the requestor.¹ The department must withhold the information you have marked under section 552.101 in conjunction with 772.318 of the Health and Safety Code. 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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

¹In that case, should the department receive another request for this particular information from a different requestor, then the department should again seek a decision from this office. *See Gov't Code §§ 552.301(a), .302.*

Ref: ID# 362859

Enc. Submitted documents

c: Requestor
(w/o enclosures)