



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 5, 2010

Ms. Jessica Sangsvang
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2010-06481

Dear Ms. Sangsvang:

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# 378517 (PIR No. 2522-10).

The City of Fort Worth (the "city") received a request for all reports and 9-1-1 calls involving a named individual that occurred over a specified period of time, including one specified case number. You state you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses Chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts.

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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 that are furnished by a service supplier confidential. *Id.* at 2. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. You inform us the city is part of an emergency communication district established under section 772.218 of the Health and Safety Code. You assert the telephone numbers you have marked in the submitted 9-1-1 call reports were provided by a 9-1-1 service supplier. Based on your representations, we conclude the city must withhold the telephone numbers you have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

Section 552.101 also encompasses the common-law right of 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate or 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 agree most of the information you have marked is highly intimate or embarrassing and of no legitimate concern to the public. Therefore this information, as well as the additional information we have marked, is generally subject to common-law privacy. However, we find the remaining information at issue is either not intimate or embarrassing or is of legitimate public interest. This information, which we have marked for release, may not be withheld under section 552.101 in conjunction with common-law privacy. We note the requestor in this instance is a representative of an insurance provider that insures the individual whose private information is at issue. 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); see also *id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or individual’s authorized representative requests information concerning the individual). Thus, if this requestor is acting as the individual’s authorized representative, she 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. Accordingly, if requestor is acting as the authorized representative of the individual whose private information is at issue, the city may not withhold any the information at issue from this requestor on the basis of common-law privacy. If the requestor is not acting as the subject individual’s authorized representative, the city must withhold the information marked under section 552.101 of the

Government Code in conjunction with common-law privacy, apart from that information marked for release.

You state you have redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. Upon review, we agree most of the information you marked is subject to section 552.130 of the Government Code. We have also marked additional information generally subject to section 552.130. However, a portion of the information at issue, which we have marked for release, does not consist of Texas motor vehicle record information and may not be withheld pursuant to this exception. Further, if the requestor is acting as the subject individual's authorized representative, she has a right of access to those portions of the marked Texas motor vehicle record information that pertain to the subject individual. *See id.* § 552.023(a). Accordingly, if the requestor is acting as the authorized representative of the subject individual, the city must withhold the marked Texas motor vehicle record information pertaining to other individuals under section 552.130, but release the information pertaining to the subject individual. If the requestor is not acting as the subject individual's authorized representative, the city must withhold the marked information under section 552.130 of the Government Code, apart from the information we have marked for release.

In summary, if the requestor is not acting as the authorized representative of the subject individual, the city must withhold the information marked under section 552.101 of the Government Code in conjunction with common-law privacy, apart from the information we marked for release. The city must also withhold the information marked under section 552.130 of the Government Code, apart from the information we marked for release. If the requestor is acting as the authorized representative of the subject individual, the city must withhold the marked Texas motor vehicle record information pertaining to other individuals under section 552.130, apart from the information we marked for release.² In either case, 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.

²In this case, should the city receive another request for these same records from a person who would not have a right of access to the subject individual's private information, the city should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302.

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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/rl

Ref: ID# 378517

Enc. Submitted documents

c: Requestor
(w/o enclosures)