



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2010

Ms. Michelle L. Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2010-09734

Dear Ms. Villarreal:

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# 385155 (LGL-10-536).

The Waco Police Department (the "department") received a request for any reports involving a specified address for the past two years. You indicate you are making some information available to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions 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. Section 552.101 encompasses information made confidential by other statutes. You contend that the information you have marked in the submitted CAD records is excepted from disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772, 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 the city of Waco to be part of an

emergency communication district that was established under section 772.318.¹ Thus, we find that to the extent the telephone numbers and addresses you have marked are the originating telephone numbers and addresses supplied by a 9-1-1 service supplier, this information must be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, to the extent the marked information was not supplied by a 9-1-1 service supplier, section 772.318 is not applicable to this information, and it must be released to the requestor.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .302(e)(1)(A). You state that the information you have marked pertains to closed investigations that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude that the department may withhold the information you have marked under section 552.108(a)(2) of the Government Code.

Next, you claim some of the remaining information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating 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 id.* § 552.130(a)(1)-(2). Accordingly, the department must withhold the Texas motor vehicle record information we have marked in the remaining information under section 552.130 of the Government Code.²

Next, you have marked a social security number in the remaining information that you seek to withhold under section 552.147 of the Government Code, which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.³ *Id.* § 552.147(a). We agree the department may withhold the social security number you have marked under section 552.147 of the Government Code.

¹Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number and a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note that section 552.147(b) 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.

We note some of the remaining information is subject to common-law privacy, which is encompassed by section 552.101 of the Government Code. The doctrine of common-law privacy 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *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 some of the remaining information is highly intimate or embarrassing and not of legitimate interest to the public. Thus, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We note that the instant requestor is an investigator with the Child Protective Services Division of the Texas Department of Family and Protective Services ("DFPS"). Section 411.114 of the Government Code allows, among other things, for DFPS to obtain criminal history record information ("CHRI") concerning an individual who is the subject of a report of abuse or neglect of a child. *See* Gov't Code § 411.114(a)(4), (a)(2)(I). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *See id.* § 411.082(2).

In this instance, the requestor does not state whether the individuals who are the subject of the submitted reports are suspects in a report of abuse or neglect of a child. Therefore, we are unable to conclude that section 411.114 of the Government Code gives the requestor a right of access to any of the submitted information and must rule conditionally. *See id.* § 411.114; *see also id.* § 411.082(2). Accordingly, if the individuals to whom the submitted reports pertain are suspects in a report of abuse or neglect of a child, then the department must release information from the submitted reports that shows the types of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that event, the department may withhold the remaining information you have marked under section 552.108 of the Government Code. If the individuals in question are not suspects in a report of abuse or neglect of a child, then the department may withhold all of the information you have marked under section 552.108. In either event, the information marked pursuant to section 552.101 of the Government Code in conjunction with section 772.3018 of the Health and Safety Code and common-law privacy and section 552.130 of the Government Code must be withheld, the marked social security

number may be withheld under section 552.147 of the Government Code, and the rest of the submitted information must be released.⁴

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/tp

Ref: ID# 385155

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴Because the instant requestor may have a special right of access to some of the submitted information in this instance, the department should request another decision if it receives a request from another requestor for this same information. See Gov't Code §§ 552.301(a), .302.