



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2010

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2010-13553

Dear Ms. Benton:

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# 392895 (City of Waco Reference No. LGL-10-855).

The Waco Police Department (the "department") received a request for reports pertaining to calls for service to a specified address and involving a named individual. You state the department will make some of the responsive information available to the requestor. You claim portions of the submitted 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. Section 552.101 encompasses information made confidential by other statutes. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications 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 only the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You indicate the City of Waco is part of an emergency communication district established under section 772.318. You have

marked the telephone numbers that the department seeks to withhold under section 772.318. Thus, we find that to the extent the telephone numbers you have marked, and the addresses we have marked, are the originating telephone numbers and addresses provided by a 9-1-1 service supplier, this information must generally be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. 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 may not be withheld under section 552.101 on that basis.

However, in this instance, the requestor is a representative of the Adult Protective Services division of the Texas Department of Family and Protective Services (“DFPS”).¹ Under chapter 48 of the Human Resources Code, the duties of DFPS include investigation of abuse, neglect, or exploitation in the provision of services to an elderly or disabled person. *See* Hum. Res. Code §§ 48.151, .152. Section 48.154 of the Human Resources Code provides in part:

(a) The [DFPS] or state agency, as appropriate, shall have access to any records or documents, including client-identifying information and medical and psychological records, necessary to the performance of the [DFPS]’s or state agency’s duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly or disabled person. A person or agency that has a record or document that the [DFPS] or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to the [DFPS] or agency.

Id. § 48.154(a). Thus, to the extent the requestor is seeking the information at issue to perform the duties of DFPS under chapter 48, the requestor has a right of access to the marked information under section 48.154 of the Human Resources Code. Therefore, there is a conflict of laws between the confidentially provision of section 772.318 of the Health and Safety Code and the right of access granted the requestor pursuant to section 48.154 of the Human Resources Code. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov’t Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.— Fort Worth 1977, writ ref’d n.r.e.). Section 772.318 of the Health and Safety Code specifically applies to the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. In contrast, section 48.154 of the Human Resources Code generally applies to any

¹*See* Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Gen. Laws 611, 641 (“A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.”).

records DFPS requires to perform its duties under chapter 48. Accordingly, we find section 48.154 is more general than section 772.318. Therefore, we conclude that, notwithstanding the access provision of section 48.154 of the Human Resources Code, to the extent the marked telephone numbers and addresses are originating telephone numbers and addresses of 9-1-1 callers that were furnished by a 9-1-1 service provider, the marked telephone numbers and addresses must be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

We note portions of the remaining information are subject to common-law privacy, which is also encompassed by section 552.101. 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). The type 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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under 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 that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must generally withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, as previously noted, the requestor is a representative of DFPS. Thus, if the requestor is seeking the information subject to common-law privacy in order to perform the duties of DFPS under chapter 48, then the requestor has a right of access to this information under section 48.154 of the Human Resources Code. Although the information we marked is confidential under common-law privacy, a statutory right of access generally prevails over the common law. See *Gallagher Headquarters Ranch Dev., Ltd. v. City of San Antonio*, 269 S.W.3d 628, 637 (Tex. App.—San Antonio 2008, pet. filed) (when statute directly conflicts with common-law principle or claim, statutory provision controls and preempts common law; legislature may enact legislation that preempts or supersedes common-law principle). Accordingly, if the requestor is seeking the information subject to common-law privacy in order to perform the duties of DFPS under chapter 48, she has a right of access to this information and it may not be withheld from her under section 552.101. However, if the requestor is not seeking the information subject to common-law privacy in order to perform the duties of DFPS under chapter 48, then she does not have a right of access and the information we marked must be withheld under section 552.101 in conjunction with common-law privacy.

In summary, if the marked telephone numbers and addresses are originating telephone numbers and addresses of 9-1-1 callers that were furnished by a 9-1-1 service provider, then 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. If the requestor is not seeking the information subject to common-law privacy in order to perform the duties of DFPS under chapter 48, then the information we have marked must be withheld under section 552.101 in conjunction with common-law privacy. The remaining information must be released.²

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 392895

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the requestor may have a right of access to certain information in the submitted documents that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor without such a right of access.