



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2010

Ms. Candice De La Garza
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 368
Houston, Texas 77002

OR2010-18169

Dear Ms. De La Garza:

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# 401767.

The City of Houston (the "city") received a request for 9-1-1 dispatch transcripts or computer aided dispatch records involving a specified address during a specified period. You state the city has released some of the responsive information 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.

Initially, you acknowledge, and we agree, the city failed to comply with section 552.301(e) of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because section 552.101 can provide a compelling reason to withhold information, we will consider whether this exception requires the city to withhold 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 the doctrine of common-law 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 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. *Id.* at 683.

You claim information that identifies the subject of the report is confidential under common-law privacy. However, an individual's identifying information is generally not confidential under common-law privacy because it is not intimate or embarrassing. Rather, this office generally only withholds the intimate or embarrassing information that implicates the privacy of an identified individual. In this instance, you do not explain to this office how the subject individual's identifying information is highly intimate or embarrassing such that it is confidential under common-law privacy. Accordingly, we have marked the portions of the submitted information that reveal information we find to be highly intimate or embarrassing and of no legitimate public interest. This marked information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no other exceptions to disclosure of this information, 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/em

Ref: ID# 401767

Enc. Submitted documents

c: Requestor
(w/o enclosures)