



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 11, 2011

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

OR2011-04931

Dear Ms. Middlebrooks:

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# 414182 (DPD PIR # 2011-00645).

The Dallas Police Department (the "department") received a request for information pertaining to 9-1-1 calls involving a named apartment complex made during a specified time period. You claim some of the submitted information is 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 representative sample of information.<sup>1</sup>

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 section 58.007 of the Family Code, which provides in relevant part:

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<sup>1</sup>We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03(a) (defining “delinquent conduct”). For purposes of section 58.007(c), a “child” is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). The information we marked pertains to an assault allegedly committed by an individual identified as a juvenile. However, we are unable to determine the age of the offender at issue. Thus, we must rule conditionally. To the extent the marked information constitutes a record of a juvenile offender engaged in delinquent conduct who is ten years of age or older and under seventeen years of age at the time of the commission of the crime, it is confidential pursuant to section 58.007 and must be withheld under section 552.101. However, to the extent this information pertains to an offender who is not ten years of age or older and under seventeen years of age at the time of the commission of the crime, the department may not withhold it under section 552.101 on the basis of section 58.007.

Section 552.101 of Government Code also encompasses section 261.201 of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

*Id.* § 261.201(a). Upon review, we find portions of the submitted information pertain to reports of alleged or suspected child abuse. *See id.* § 261.201(a)(1); *see also id.* §§ 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code), 101.003(a) (defining "child" for purposes of the Family Code). Accordingly, the information we have marked is within the scope of section 261.201. Thus, the department must withhold the information we have marked under section 552.101 in conjunction with section 261.201(a)(1). *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000 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 Dallas to be part of an emergency communication district that was established under section 772.318. You have marked the telephone numbers of 9-1-1 callers the department seeks to withhold. We conclude the department must withhold the marked telephone numbers under section 552.101 in conjunction with section 772.318, to the extent they consist of originating telephone numbers that were furnished by a service supplier. If the marked telephone numbers are not the originating telephone numbers provided by a service supplier, the marked information may not be withheld under section 552.101 in conjunction with section 772.318.

Section 552.101 of the Government Code also encompasses the common-law right of privacy. 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 satisfied. *Id.* at 681-82. 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 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). Further, in Open Records

Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision Nos. 393 at 2, 339 (1982). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The remaining information you have marked is not highly intimate or embarrassing information. Thus, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle title or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(2). The department must withhold the Texas motor vehicle record information you have marked, as well as the additional information we have marked, under section 552.130.<sup>2</sup>

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, to the extent the marked information constitutes a record of a juvenile offender engaged in delinquent conduct who is ten years of age or older and under seventeen years of age at the time of the commission of the crime. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code. The department must withhold the marked telephone numbers under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, to the extent they consist of originating telephone numbers that were furnished by a service supplier. The department must also withhold the marked information under section 552.130 of the Government 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.

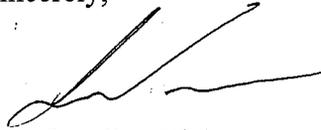
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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

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

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 414182

Enc. Submitted documents

c: Requestor  
(w/o enclosures)