



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 29, 2011

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

OR2011-05856

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# 415778 (PIR # 2011-01106).

The Dallas Police Department (the "department") received a request for information pertaining to a specified fatal accident. You claim that some of the requested 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 information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that 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," and encompasses information made confidential by other statutes. Gov't Code § 552.101. You have marked an address and telephone number in the submitted information that you seek to withhold 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

¹We assume that the representative sample of records 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 that those records contain substantially different types of information than that submitted to this office.

and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). The City of Dallas is part of an emergency communication district that was established under section 772.318.² Provided that the information you have marked consists of an originating address and telephone number furnished by a 9-1-1 service supplier, we agree that 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.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information if it (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 established. *Id.* at 681-82.

This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision No. 545 (1990). However, because privacy is a personal right that “terminates upon the death of the person whose privacy is invaded,” it is not applicable to information that relates to only a deceased individual. *Moore v. Charles B. Pierce Film Enters.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); *see also* Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). In this instance, the information you have marked as private pertains to only a deceased individual; thus, the department may not withhold this information under section 552.101 in conjunction with common-law privacy.

You also seek to withhold portions of the remaining information under section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). The purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, Texas motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229; H-917; ORD 272 at 1. Thus, motor vehicle information pertaining to a deceased person may not be withheld under section 552.130. In this instance, the requestor states he is the authorized representative of the surviving spouse of the deceased individual. Thus, he has a right of access to his client’s Texas motor vehicle record information and it may not be withheld from him under section 552.130 of the

²Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

Government Code. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests).

In summary, provided that the information you have marked consists of an originating address and telephone number furnished by a 9-1-1 service supplier, 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. The remaining information must be released.³

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 415778

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note that the information being released in this instance contains confidential information to which the requestor has a right of access. *See* Gov't Code § 552.023(a). If the department receives another request for this same information from a different requestor, then the department should again seek a decision from this office.