



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2011

Ms. Leticia Brysch
City Clerk
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR2011-11566

Dear Ms. Brysch:

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# 426981 (PIR# 3450).

The City of Baytown (the "city") received a request for audio recordings of 9-1-1 calls, call reports, written transcripts, notes, logs, documents, and computer data pertaining to a specified automobile accident. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the portions of the request for call reports, written transcripts, notes, logs, documents, and computer data pertaining to the specified automobile accident. To the extent any information responsive to these portions of the request existed on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. *See id.* at 681-82. 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. Upon review, we find the information we have noted within Track 1 is highly intimate or embarrassing and not of legitimate public concern. In this instance, you state the city does not possess the technological capability to redact information from audio files. Thus, we find the city must withhold Track 1 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Open Records Decision No. 364 (1983). However, we find you have not demonstrated how any portion of the information in Tracks 2 through 8 is highly intimate or embarrassing and not of legitimate public concern. Thus, Tracks 2 through 8 may not be withheld under section 552.101 in conjunction with common-law privacy. As you raise no further exceptions to disclosure, Tracks 2 through 8 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 426981

Enc. Submitted documents

c: Requestor
(w/o enclosures)