



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 18, 2011

Mr. Gary A. Scott  
Assistant City Attorney  
City of Conroe  
P.O. Box 3066  
Conroe, Texas 77305

OR2011-15196

Dear Mr. Scott:

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# 433529.

The Conroe Police Department (the "department") received a request for copies of the 9-1-1 call recordings for a specified incident. You claim that portions of the requested information are exempted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You raise section 552.101 of the Government Code for portions of the submitted information. Section 552.101 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as chapter 772 of the Health and Safety Code. Chapter 772 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 the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 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. Health & Safety Code § 772.304.

We understand the City of Conroe is part of an emergency communication district established under chapter 772. You seek to withhold telephone numbers and addresses within the submitted audio recordings of 9-1-1 calls under section 772.318. Upon review, we find that recording 11034468cs3 does not contain any telephone numbers or addresses. Additionally, we find that the telephone number in recording 11034468cs1 was provided by the 9-1-1 caller, not by a 9-1-1 service provider. Thus, we find that you have failed to establish the applicability of section 772.318 for this information, and no portion of these two recordings may be withheld under section 552.101 of the Government Code on this basis. It appears that the telephone number in recording 11034468cs2 may have been provided by a 9-1-1 service provider. Accordingly, we rule conditionally. Thus, if the caller's originating telephone number in recording 11034468cs2 was furnished by a 9-1-1 service supplier, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 772.318. But, if the caller's originating telephone number in recording 11034468cs2 was not furnished by a 9-1-1 service supplier, then it may not be withheld under section 552.101 on the basis of section 772.318 and must be released.

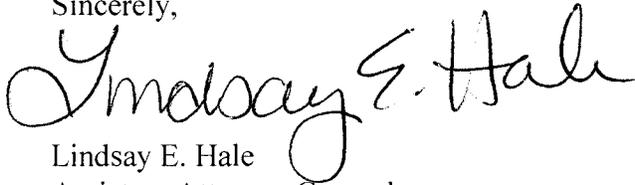
You also raise common-law privacy for the submitted information. Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable 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. 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. Upon review, we find you have failed to establish any of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public; therefore, none of the remaining information is confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

You claim the department lacks the technical capacity to redact the information at issue from recording 11034468cs2. However, because the department had the ability to copy the recording in order to submit the requested information for our review, we believe the department has the capacity to produce a copy of only the non-confidential portions of the recording at issue. Therefore, in summary, if the caller's originating telephone number in recording 11034468cs2 was furnished by a 9-1-1 service supplier, the department must withhold only this information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, and must release the remaining information. If the caller's originating telephone number in recording 11034468cs2 was not furnished by a 9-1-1 service supplier, the department must release all of the submitted information.

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 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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/akg

Ref: ID# 433529

Enc. Submitted documents

c: Requestor  
(w/o enclosures)