



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 31, 2011

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

OR2011-15928

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# 436856 (ORR# 2011-7968).

The Dallas Police Department (the "department") received a request for a specified incident report. You claim 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 representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 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 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

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

disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. The requestor knows the identity of the individual involved as well as the nature of the information in the submitted report. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, we determine the submitted information is confidential in its entirety under common-law privacy.

The requestor is the legal representative of the spouse of the individual whose privacy interests are at issue. Section 552.023 of the Government Code provides a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(a). Therefore, if the requestor is not the authorized representative of the individual at issue, then the department must withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy. If, however, the requestor is the authorized representative of the individual at issue, then the requestor has a right of access to the individual's private information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). We note the purpose of section 552.130 of the Government Code is to protect the privacy interests of individuals. Therefore, if the requestor is the authorized representative of the individual at issue pursuant to section 552.023, then the requestor also has a right of access to the individual's motor vehicle record information. *See id.* § 552.023. Nevertheless, the department may raise exceptions to disclosure that are not designed to protect an individual's privacy interests. Accordingly, we will address the department's remaining argument under section 552.101 of the Government Code for the submitted information.

Section 552.101 encompasses information protected by other statutes, including chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

We understand the City of Dallas is part of an emergency communication district established under section 772.318. Thus, to the extent it is not otherwise private, the department must withhold the telephone number of a 9-1-1 caller you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if it is an originating telephone number that was furnished by a 9-1-1 service supplier. If the

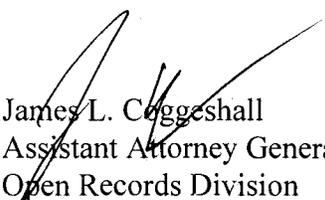
marked telephone number is not an originating telephone number furnished by a 9-1-1 service supplier, then the department may not withhold this information on that ground.

To conclude, if the requestor is not the authorized representative of the individual at issue, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the authorized representative of the individual whose information is at issue, then the department must withhold the marked telephone number of a 9-1-1 caller under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if it is an originating telephone number that was furnished by a 9-1-1 service supplier, and must release the remaining information pursuant to section 552.023 of the Government Code.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 436856

Enc. Submitted documents

c: Requestor
(w/o enclosures)