



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 13, 2012

Ms. J. Middlebrooks  
Assistant City Attorney  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2012-00735

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# 442275 (PIR 11-9496).

The Dallas Police Department (the "department") received a request for any records pertaining to a specified service number. You claim 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>

Initially, we must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(b). You state the department received the request for information

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<sup>1</sup>We 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.

on October 18, 2011. Thus, we find the department's ten-business-day deadline was November 1, 2011. *See id.* However, we received the department's request for a ruling in an envelope postmarked on November 3, 2011. *See id.* § 552.308(a) (prescribing standards for timeliness of action by United States or common or contract carrier). Consequently, we find the department failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 at 2 (1977). However, because sections 552.101 and 552.130 can provide compelling reasons to withhold information, we will consider these exceptions.

Next, we note you seek to withhold information relating to a 9-1-1 caller. In Open Records Letter No. 2011-17075 (2011), this office issued a previous determination to the department authorizing the department to withhold the originating telephone number of a 9-1-1 caller furnished to the department by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code without requesting a decision from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). You indicate the telephone number you have marked is the originating telephone number of a 9-1-1 caller furnished by a service supplier established in accordance with chapter 772. As such, provided the originating telephone number at issue was furnished to the department by a service supplier, the department must rely on Open Records Letter No. 2011-17075 as a previous determination and withhold the marked telephone number in accordance with the previous determination.

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 the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. 540 S.W.2d at 683. You inform us the submitted information pertains to an investigation of alleged sexual assault. Upon review, we find the department must generally withhold the victim's identifying information contained in the submitted photographs and videos under section 552.101 in conjunction with common-law privacy.

However, the requestor may be the alleged victim depicted in the submitted photographs and videos. Section 552.023 of the Government Code provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *See Gov't Code* § 552.023(a); *see also id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or individual's authorized representative requests information concerning the individual). Accordingly, this requestor would have a right of access to information pertaining to her that would ordinarily be confidential under section 552.101 in conjunction with common-law and constitutional privacy. Therefore, if the requestor is the alleged victim in the submitted photographs and videos, then her identifying information may not be withheld from her under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is not the alleged victim, then the department must withhold the alleged victim's identifying information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

Federal courts have recognized individuals have a constitutional right to privacy in their unclothed bodies. Quoting the United States Court of Appeals for the Ninth Circuit, which concluded, "[w]e cannot conceive of a more basic subject of privacy than the naked body[.]" the United States Court of Appeals for the Second Circuit has found "there is a right to privacy in one's unclothed or partially unclothed body, regardless [of] whether that right is established through the auspices of the Fourth Amendment or the Fourteenth Amendment." *Poe v. Leonard*, 282 F.3d 123, 138-39 (2d Cir. 2002) (quoting *York v. Story*, 324

F.2d 450, 455 (9<sup>th</sup> Cir. 1963). The submitted videos depict the partially unclothed bodies of the alleged victim and another individual. In the event the requestor is the alleged victim in the submitted videos, we find the other individual in the submitted videos has a constitutional right to the privacy of his information that outweighs any public interest in its release. Therefore, we conclude that, if the requestor is the alleged victim in the submitted videos, the department must withhold the other individual's information at issue under section 552.101 in conjunction with constitutional privacy.

As previously noted, the requestor may be the alleged victim depicted in the submitted videos. If the requestor is the alleged victim in the submitted videos, then the portion of the videos depicting her information at issue may not be withheld from her under section 552.101 of the Government Code in conjunction with constitutional privacy. *See* Gov't Code § 552.023. However, if the requestor is not the alleged victim depicted in the submitted videos, then the department must withhold the alleged victim's information at issue under section 552.101 in conjunction with constitutional privacy. Regardless, the department must withhold the other individual's information at issue under section 552.101 in conjunction with constitutional privacy.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country[.] Gov't Code § 552.130(a)(1). Upon review, we find the department must withhold the driver's license number you have marked under section 552.130 of the Government Code.

In summary, provided the originating telephone number at issue was furnished to the department by a service supplier, the department must rely on Open Records Letter No. 2011-17075 as a previous determination and withhold the marked telephone number in accordance with the previous determination. If the requestor is not the alleged victim in the submitted photographs, then the department must withhold the alleged victim's identifying information under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the alleged victim in the submitted videos, then only the other individual's information at issue must be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy. However, if the requestor is not the alleged victim, then the department must withhold both individuals' information at issue under section 552.101 in conjunction with constitutional privacy. The department must withhold the driver's license number you have marked under section 552.130 of the Government Code. The department must release the remaining information.<sup>2</sup>

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<sup>2</sup>We note the information being released in this instance contains confidential information to which the requestor has a special right of access. *See* Gov't Code § 552.023(a). If the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office.

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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/agn

Ref: ID# 442275

Enc. Submitted documents

c: Requestor  
(w/o enclosures)