



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 17, 2012

Ms. S. McClellan  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2012-00771

Dear Ms. McClellan:

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# 442435 (DPD Request Number 2011-9744).

The Dallas Police Department (the "department") received a request for reports and call sheets pertaining to four specified cases. You claim that portions of the submitted information are 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.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code* § 552.301(e)(1)(D). The department received the request for information on

October 25, 2011. You do not inform us the department was closed for any business days between October 25, 2011 and November 15, 2011. Accordingly, you were required to provide the information required by section 552.301(e) by November 15, 2011. However, you did not provide a copy of the written request for information until November 16, 2011. Accordingly, we conclude the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 319 (1982). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 177 (1977). The department claims sections 552.101 and 552.130 of the Government Code for the submitted information. Because these sections can provide compelling reasons to withhold information, we will address the applicability of sections 552.101 and 552.130 to the submitted information.

We note you seek to withhold the telephone number of a 9-1-1 caller. In Open Records Letter No. 2011-17075 (2011), this office issued a previous determination to the department authorizing it 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). Provided that the originating telephone number of the 9-1-1 caller at issue was furnished to the department by a service supplier established in accordance with chapter 772, the department must withhold the marked telephone number in accordance with the previous determination issued in Open Records Letter No. 2011-17075.

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 information protected by other statutes. Section 261.201 of the Family Code provides as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You argue that the report you have marked relates to an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). We note the report at issue pertains to an investigation of an assault by threat of an adult. Upon review, although children were present, we find you have not demonstrated how the report at issue pertains to an investigation of child abuse for the purposes of chapter 261 of the Family Code. Accordingly, section 261.201 does not apply to the report at issue, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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 disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the department must withhold this information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130. Accordingly, the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, provided that the originating telephone number of the 9-1-1 caller at issue was furnished to the department by a service supplier established in accordance with chapter 772, the department must withhold the marked telephone number in accordance with the previous determination issued in Open Records Letter No. 2011-17075. The department must

withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. The remaining information 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](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, appearing to read 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/ag

Ref: ID# 442435

Enc. Submitted documents

c: Requestor  
(w/o enclosures)