



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2012

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2012-01580

Dear Ms. Graham:

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# 445067.

The Mesquite Police Department (the "department") received two requests from different requestors for information pertaining to a specified incident. 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.

We note you seek to withhold information relating to 9-1-1 callers. In Open Records Letter No. 2011-15075 (2011), this office issued a previous determination to the department authorizing the department to withhold originating telephone numbers of 9-1-1 callers 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 772.118 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 state the telephone numbers you have marked are the originating telephone numbers of 9-1-1 callers furnished by a service supplier established in accordance with chapter 772. As such, the department must withhold the marked telephone numbers in

accordance with the previous determination issued to the department in Open Records Letter No. 2011-15075.¹

Section 552.101 of the Government Code also 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. This office has found 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 No. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Upon review, we find the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must generally withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the submitted documents reveal the first requestor has power of attorney for the individual whose privacy interests are at issue. Further, we note the second requestor is the spouse of the individual whose privacy interests are at issue. Thus, each requestor may be the authorized representative of this individual, and may have a right of access to information pertaining to that individual that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Because we are unable to determine whether either requestor is the authorized representative of the individual whose privacy interests are at issue, we must rule conditionally. Accordingly, if either requestor is acting as the authorized representative of that individual, the department may not withhold the marked information from that requestor under section 552.101 on the basis of common-law privacy. If either requestor is not acting as the authorized representative of that individual, the department must withhold from that requestor the information you marked under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold the marked telephone numbers in accordance with the previous determination issued to the department in Open Records Letter No. 2011-15075. If either requestor is not the authorized representative of the individual whose privacy interests are at issue, the department must withhold from that requestor the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

¹As we are able to make this determination, we do not address your claim under section 771.061 of the Health and Safety 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,

A handwritten signature in cursive script, appearing to read "Claire Morris Sloan".

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 445067

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)