



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 11, 2012

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

OR2012-07057

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# 453420 (PIR No. 2012-02076).

The Dallas Police Department (the "department") received a request for 9-1-1 calls and police reports pertaining to two specified service numbers. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information pertaining to the requested police reports. Although you state the department submitted a representative sample of information, no portion of the submitted information pertains to the above referenced category of information. Thus, we find the submitted information is not representative of the information sought in this part of the request. Please be advised this open records letter ruling applies only to the type of information you have submitted for our review. Therefore, this letter ruling 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. *See Gov't Code* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information is presumed to be public). Thus, to the extent information responsive to this portion of the request existed on the date

the department received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the department's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving the request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). You inform us the department received the instant request for information on February 21, 2012. Thus, the department's ten-business-day deadline was March 6, 2012. However, the required information was received by this office in an envelope postmarked March 7, 2012. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Consequently, we find the department failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists 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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.108 of the Government Code for the submitted information, this is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold any of the submitted information under section 552.108. However, because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the information at issue.

We note you seek to withhold the telephone number and address of a 9-1-1 caller. 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. This section encompasses information protected by other statutes, such as chapter 772 of the Health and Safety Code which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 911 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 furnished by a 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.

We note chapter 772 of the Health and Safety Code only applies to the originating telephone numbers and addresses of 9-1-1 callers provided by a service supplier. The address contained in the submitted audio recordings was provided by the caller and not a service supplier. Accordingly, chapter 772 of the Health and Safety Code is not applicable to the address in the submitted audio recordings, and this information may not be withheld under section 552.101 of the Government Code on that basis. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (language of confidentiality provision controls scope of its protection). 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 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. Thus, to the extent the telephone numbers of 9-1-1 callers in the submitted recordings were supplied by a 9-1-1 service supplier, the department must withhold this information in accordance with the previous determination issued in Open Records Letter No. 2011-17075. If the telephone numbers of 9-1-1 callers in the submitted recordings were not supplied by a 9-1-1 service supplier, then the department may not withhold this information under section 552.101 on the basis of section 772.318.

Section 552.101 also encompasses the common-law right to 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 met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Upon review, we find the information we have indicated in the submitted audio recordings is highly intimate or embarrassing and of no legitimate public interest. Therefore, the department must withhold the information we have indicated under section 552.101 in conjunction with common-law privacy.

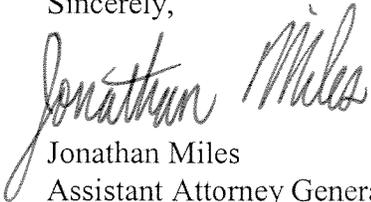
To the extent the telephone numbers of 9-1-1 callers in the submitted recordings were supplied by a 9-1-1 service supplier, the department must withhold this information in accordance with the previous determination found in Open Records Letter No. 2011-17075.

The department must withhold the information we have indicated under section 552.101 in conjunction with common-law privacy. 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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 453420

Enc. Submitted documents

c: Requestor  
(w/o enclosures)