



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2012

Ms. Molly Shortall
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2012-12348

Dear Ms. Shortall:

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# 461216.

The City of Arlington (the "city") received a request for the recording of a 9-1-1 call made by a named individual on a specified date. You claim that the requested 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.

Initially, we note the city did not comply with its deadline under section 552.301(b) of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *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).

You state the city received the present request for information on May 14, 2012; therefore, the city's ten-business-day deadline under section 552.301(b) was May 29, 2012. We note May 28, 2012 was a holiday and this office does not count holidays as business days for purposes of calculating a governmental body's deadlines under the Act. The city requested this decision by United States mail meter-marked May 30, 2012. See Gov't Code § 552.308 (prescribing requirements for proof of compliance with Gov't Code § 552.301). Thus, the city did not comply with section 552.301(b), and the submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). As the city's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will address it.

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 common-law right of 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 established. *Id.* at 681-82.

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. *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. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 (1982) (references in emergency medical records to drug overdoses, acute alcohol intoxication, obstetrical or gynecological operations or illnesses, convulsions or seizures, and emotional or mental distress). We also have determined common-law privacy encompasses certain types of personal financial information. Personal financial information related only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that 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.

In this instance, the requestor knows the identity of the individual involved. You seek to withhold the submitted information in its entirety. However, you have not demonstrated, nor does it otherwise appear, that the incidents at issue in the submitted information are situations in which the submitted information must be withheld in its entirety on the basis of common-law privacy. Accordingly, the city may not withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

However, upon review, we agree that portions of the submitted information are highly intimate or embarrassing and of no legitimate public concern. Accordingly, the city must withhold the type of information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The city has failed to demonstrate, however, how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy. Accordingly, 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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/som

Ref: ID# 461216

Enc. Submitted documents

c: Requestor
(w/o enclosures)
