



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 1, 2012

Ms. Rachel L. Lindsay  
Counsel For the Town of Flower Mound  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2012-17513

Dear Ms. Lindsay:

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# 469829.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a specified address. 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.

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 information protected by other statutes, such as section 58.007(c) of the Family Code, which provides as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a), (b)(3) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find the information we have marked involves juvenile delinquent conduct that occurred after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this information. Accordingly, we find the marked information is confidential pursuant to section 58.007(c) of the Family Code, and the town must withhold this information under section 552.101 of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code also encompasses 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 9-1-1 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 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

You inform us the remaining information includes the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier. However, you do not inform us whether the town is part of an emergency communication district established under chapter 772 of the Health and Safety Code. Therefore, we must rule conditionally. Accordingly, if the town is part of an emergency communication district established under chapter 772, then, to the extent the telephone numbers and addresses of the 9-1-1 callers were supplied by a 9-1-1 service supplier, the town must withhold this information under section 552.101 of the Government Code in conjunction with section 772.118, section 772.218, or section 772.318 of the Health and Safety Code.<sup>2</sup> If the town is not subject to chapter 772, or if the telephone numbers and addresses were not supplied by a 9-1-1 service supplier, then the town may not withhold this information under section 552.101 on the basis of section 772.118, section 772.218, or section 772.318.

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<sup>1</sup>As our ruling for this information is dispositive, we need not address your arguments against its release.

<sup>2</sup>As our ruling for this information is dispositive, we need not address your remaining argument against its release.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the remaining information pertains to a pending criminal investigation. However, this information consists of multiple reports and you have not identified which reports pertain to this pending investigation. Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(1) of the Government Code to the remaining information. *See* Gov’t Code §§ 552.301(e)(1)(A), .301(e)(2) (governmental body must label information to indicate which exceptions apply to which parts of information). Accordingly, none of the remaining information may be withheld on that basis.

We note portions of the remaining information are protected by common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law 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. 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 Nos. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we have marked the remaining information that is highly intimate or embarrassing and is of no legitimate public interest. Thus, the town must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

We also note some of the remaining information is subject to section 552.130(a)(2) of the Government Code, which excepts from disclosure information related to “a motor vehicle title or registration issued by an agency of this state or another state or country[.]”<sup>3</sup> Gov’t Code § 552.130(a)(2). The town must withhold the motor vehicle record information we have marked under section 552.130(a)(2) of the Government Code.<sup>4</sup>

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130(a)(2) of the Government Code, without the necessity of seeking a decision from this office.

In summary, the town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the town is part of an emergency communication district established under chapter 772 of the Health and Safety Code, then, to the extent the telephone numbers and addresses of the 9-1-1 callers in the remaining information were supplied by a 9-1-1 service supplier, the town must withhold this information under section 552.101 of the Government Code in conjunction with section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. The town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The town must withhold the motor vehicle record information we have marked under section 552.130(a)(2) 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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 469829

Enc. Submitted documents

c: Requestor  
(w/o enclosures)