



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 5, 2013

Mr. Stephen A. Cumbie
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2013-15440

Dear Mr. Cumbie:

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# 498520.

The City of Fort Worth (the "city") received a request for the audio recordings of 9-1-1 calls regarding a specified address on three specified dates. You inform us the city is releasing one of the requested audio recordings. We understand the city will redact the originating telephone number of a 9-1-1 caller pursuant to Open Records Letter No. 2011-15641 (2011).¹ You claim 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.

You state one of the requested audio recordings was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-08269 (2013). In Open Records Letter No. 2013-08269, we determined the city may withhold the information at issue in that ruling pursuant to section 552.108(a)(1) of the

¹Open Records Letter No. 2011-15641 is a previous determination issued to the city authorizing the city to withhold the originating telephone numbers of 9-1-1 callers furnished to the city 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 772.218 of the Health and Safety Code, without requesting a decision from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code.)

Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the prior ruling was based. Accordingly, for the requested audio recording that was previously requested and ruled upon by this office, we conclude the city may rely on Open Records Letter No. 2013-08269 as a previous determination and withhold the audio recording at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 doctrine of 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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 submitted information must be withheld in its entirety to protect the individual’s privacy.

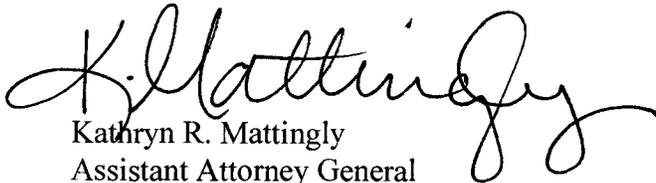
In this instance, although you claim the submitted audio recording is protected in its entirety by common-law privacy, you have not demonstrated, nor does it otherwise appear, this is a situation in which the submitted recording must be withheld in its entirety on that basis. However, upon review, we agree portions of the submitted recording satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information you have indicated, in addition to the 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 concern to the public. Therefore, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, for the requested audio recording that was previously requested and ruled upon by this office, the city may rely on Open Records Letter No. 2013-08269 as a previous determination and withhold the audio recording at issue in accordance with that ruling. The city must withhold the information you have indicated, in addition to the information we have indicated, under section 552.101 of the Government Code 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 498520

Enc. Submitted documents

c: Requestor
(w/o enclosures)