



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

May 30, 2003

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

OR2003-3659

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181921.

The Mesquite Police Department (the "department") received a request for all information relating to two specified addresses and five named individuals as well as information concerning a particular arrest of one of those individuals for a specified crime. You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.130 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." This section incorporates statutory confidentiality provisions such as those found in chapter 772 of the Health and Safety Code. Chapter 772 authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *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 contend that the originating telephone numbers and

addresses of 9-1-1 callers contained in the submitted information are confidential under chapter 772. To the extent the originating addresses and telephone numbers of 9-1-1 callers were supplied by a 9-1-1 service supplier to a 9-1-1 district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code, the addresses and telephone numbers must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by statute. However, if the telephone numbers and addresses were not provided by a 9-1-1 service supplier to a 9-1-1 district subject to section 772.118, 772.218, or 772.318, the addresses and telephone numbers must be released.

Section 552.101 also incorporates section 261.201(a) of the Family Code, which provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The information submitted as Exhibit 3 relates to an allegation of child abuse and neglect and therefore comes within the scope of section 261.201 of the Family Code. You do not inform us that the department has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given this assumption, we conclude that Exhibit 3 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold this information from disclosure under section 552.101 of the Government Code as information made confidential by law.<sup>1</sup>

Section 552.101 also encompasses the common law right to privacy, which protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Where an individual's

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<sup>1</sup>We note, however, that if the Texas Department of Regulatory Services has created a file on this alleged neglect, the child's parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(g).

criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In addition, prior decisions of this office have found that personal financial information not relating to a financial transaction between an individual and a governmental body is protected by common law privacy. *See Open Records Decision Nos. 600 (1992), 545 (1990)*. We note, however, that when a requestor asks for information relating to a particular incident, the request does not implicate the privacy concerns expressed in *Reporters Committee* because complying with the request does not require the governmental body to compile unspecified records. We agree that some of the requested information is protected by common law privacy and must therefore be withheld pursuant to section 552.101. We have marked this information.

Next, you contend that portions of the submitted information are subject to section 552.130 of the Government Code. This section excepts from disclosure information that "relates to: (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; (2) a motor vehicle title or registration issued by an agency of this state; or (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document." We agree that, under section 552.130 of the Government Code, you must withhold the motor vehicle record information that you have marked. We also note that the submitted documents include a "state identification number." If this number relates to a personal identification document issued by an authorized agency of this state, it must also be withheld in accordance with section 552.130.

Finally, social security numbers contained in the requested information may also be excepted from disclosure under section 552.101. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See Open Records Decision No. 622 (1994)*. We have no basis for concluding that the social security numbers are confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security numbers, the department should ensure that such numbers are not obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the telephone numbers and addresses of 9-1-1 callers must be withheld under section 552.101 to the extent they were supplied by a 9-1-1 service supplier to a 9-1-1 district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code. Exhibit 3 is confidential pursuant to section 261.201 and must be withheld under section 552.101 of the Government Code. We have marked information that is protected by the common law right of privacy and must be withheld under section 552.101. Pursuant to

section 552.130, the department must withhold the marked motor vehicle record information as well as the "state identification number" if the number relates to a personal identification document issued by an authorized agency of this state. Social security numbers must be withheld if obtained or maintained pursuant to a law enacted on or after October 1, 1990. All other information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

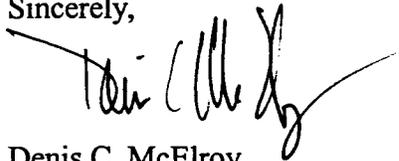
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis C. McElroy", with a long horizontal flourish extending to the right.

Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 181921

Enc. Submitted documents

c: Mr. Jay Cooper  
1520 Janwood Drive  
Plano, Texas 75075  
(w/o enclosures)