



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

June 2, 2003

Mr. Brad Norton  
Assistant City Attorney  
City of Austin - Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546

OR2003-3707

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181970.

The City of Austin Police Department (the "department") received a request for certain incident reports, reports concerning named individuals, and a copy of a 911 tape. You claim that the requested 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.

We first address your argument under section 552.108. Section 552.108(a) provides in pertinent part that "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Section 552.108(b) provides in pertinent part that "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted . . . if: (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1). A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to the information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In this case, you have failed to demonstrate how release of the requested information would

interfere with law enforcement. Therefore, we conclude you may not withhold the submitted information under section 552.108.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. 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. 540 S.W.2d at 683. We have marked certain information in the submitted documents that must be withheld under section 552.101 and common-law privacy.

We next note that the telephone number and address of the 9-1-1 caller contained in the submitted records may be protected from disclosure by section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier. *See* Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 9-1-1 telephone numbers and addresses. *See* Health & Safety Code §§772.401, *et seq.*

We note that the submitted audio tape contains the phone number of the caller spoken on the tape by the 9-1-1 operator. We conclude that if the City of Austin is part of an emergency communication district established under section 772.118, 772.218, or 772.318 of the Health and Safety Code, then the department must withhold the originating telephone number of the 911 caller on the audio tape under section 552.101 to the extent the number was provided by a service supplier. We also note that the audio tape contains the address of the caller. However, this information was provided by the caller and not supplied by a 9-1-1 service supplier to an emergency communication district. Therefore, the address information on the tape is not confidential and must be released.

We further note that, in the accompanying written "complaint history detail," the caller's telephone number and address appear. To the extent that the address and telephone number contained in these records is an originating address and telephone number of a 9-1-1 caller and was supplied by a 9-1-1 service supplier to an emergency communication district that is subject to chapter 772 of the Health and Safety Code, the telephone number and address must be withheld from disclosure under section 552.101. However, if this telephone number and address were not provided by a 9-1-1 service supplier to an emergency communication district subject to chapter 772 of the Health and Safety Code, the telephone number and address must be released.

In summary, you must withhold the responsive information we have marked under common-law privacy in conjunction with section 552.101 of the Government Code. Concerning the 9-1-1 audio tape and accompanying written "complaint history detail," the address and telephone number contained in the submitted "complaint history detail" are excepted from disclosure under section 552.101 if it is an originating address and telephone number of a 9-1-1 caller supplied by a 9-1-1 service supplier to an emergency communication district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code. You must also withhold the caller's phone number on the submitted audiotape to the extent the number was provided by a service supplier. The address on the audiotape, as well as the remainder of the submitted information, must be released to the requestor.

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,



Robert F. Maier  
Assistant Attorney General  
Open Records Division

RFM/seg

Ref: ID# 181970

Enc. Submitted documents

c: Mr. Ted Cresswell  
1808 West 8<sup>th</sup> Street  
Austin, Texas 78703  
(w/o enclosures)