ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2005

Ms. Rebecca H. Brewer
Abernathy, Roeder, Boyd & Joplin
P.O. Box 1210
McKinney, Texas 75070-1210

OR2005-04780

Dear Ms. Brewer:

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# 225248.

The Frisco Police Department (the "department"), which you represent, received a request for information pertaining to an incident at a specified address. 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.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information that another statute makes confidential. Gov't Code § 552.101. Chapter 772 of the Health and Safety Code makes the originating telephone numbers and addresses of certain 9-1-1 calls confidential. This chapter 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 address and telephone number of the

9-1-1 caller in the submitted information are confidential under chapter 772. You have not explained what type of emergency communication district the department is located in. To the extent the originating address and telephone number of the 9-1-1 caller 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 originating address and telephone number must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by statute. However, if the address and telephone number 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 originating address and telephone number may not be withheld on this basis and, as you claim no other exception for them, they must be released.

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. This office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the information the department must withhold under section 552.101 in conjunction with privacy.

Section 552.130 excepts from disclosure certain motor vehicle information.[1] Section 552.130 provides in relevant part:

> (a) Information is excepted from the requirement of Section 552.021 if the information relates to:
>
> > (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
> >
> > (2) a motor vehicle title or registration issued by an agency of this state[.]

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[1]The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Therefore, the department must withhold from disclosure the information we have marked under section 552.130.

In summary, to the extent the originating address and telephone number of the 9-1-1 caller 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 address and telephone number must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by statute. The department must withhold the information we have marked under 1) section 552.101 in conjunction with common law privacy and 2) section 552.130. The remaining requested 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,

Tamara L. Harswick

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 225248

Enc. Submitted documents

c: Ms. Debbie Burch
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(w/o enclosures)