



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2006

Mr. Ernesto Rodriguez
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2006-01016

Dear Mr. Rodriguez:

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# 241386.

The City of El Paso (the "city") received a request for a specific incident report and related 9-1-1 call. You state that you will release some of the requested information. You claim, however, that the submitted information is 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.¹

Initially, we note that the city has redacted a social security number in the submitted information. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. However, you have also redacted a

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

driver's license number, a telephone number, and an address from the submitted documents. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold driver's license numbers, telephone numbers, or addresses without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision 673 (2000). Because we can discern the nature of this information, being deprived of it does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised that marking the information in such a way that we cannot view it generally deprives us of the ability to determine whether such information may be withheld and leaves this office with no alternative other than ordering that the information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested" or representative sample), 552.302.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release 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 (Tex. 1976). The types 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. *Id.* at 683. In this instance, you claim that Exhibit B should be withheld in its entirety on the basis of common-law privacy. We note, however, that only in instances of sexual assault or suicide, where it is demonstrated that the requestor knows the identity of the victim, as well as the nature of the incident, do we require the entire report to be withheld to protect the victim's privacy. Here, although you seek to withhold the submitted report in its entirety, you have not demonstrated nor does the report reflect a situation in which the entire report must be withheld on the basis of common-law privacy. We have marked, however, a portion of the information in Exhibit B that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information is not protected by common-law privacy and may not be withheld on that basis.

You claim that Exhibit D contains information protect by chapter 772 of the Health and Safety Code, which is encompassed by section 552.101 of the Government 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. You indicate that the emergency communication district here was established under section 772.318. You further indicate that the 9-1-1 caller's telephone number and address

were furnished by a service supplier.² Thus, based on your representations, we determine that the telephone number and address of the 9-1-1 caller you have marked, plus additional information we have marked, in Exhibit D must be withheld under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.

You state that some of the submitted information, which you have marked, is confidential under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure 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[.]

Gov't Code § 552.130. However, we note that section 552.130 is designed to protect the privacy of individuals, and the right to privacy expires at death. *See Moore*, 589 S.W.2d at 491. Thus, the city may not withhold the Texas-issued motor vehicle information regarding the deceased individual, which we have marked for release. The city must, however, withhold the remaining Texas-issued motor vehicle record information you have marked under section 552.130 of the Government Code.

You also claim that the submitted information contains social security numbers, which you have marked. Section 552.147 of the Government Code³ provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, we the city must withhold the social security numbers you have marked, as well as the one we have marked, under section 552.147 of the Government Code.⁴

In summary, the city must withhold the information we marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the telephone number and address of the 9-1-1 caller you have marked, plus additional information we have marked, in Exhibit D under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. With the exception of the information

²Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

³Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon).

⁴We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

we have marked for release, the city must withhold the remaining information you have marked under section 552.130 of the Government Code. The city must withhold the social security numbers you have marked, plus the social security number we have marked, under section 552.147 of the Government Code. The remaining 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, 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); *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 Office of the Attorney General 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. 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 'J. Thompson', with a long horizontal stroke extending to the right.

Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 241386

Enc. Submitted documents

c: Celina Avila
KVIA-TV
4140 Rio Bravo
El Paso, TX 79902
(w/o enclosures)