ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2006

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P. O. Box 469002
Garland, Texas 75046-9002

OR2006-08355

Dear Mr. Mann:

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# 255502.

The City of Garland (the "city") received three related requests from two requestors, who are husband and wife. One request is for the 9-1-1 call related to a specific incident, and the other two are for the police report related to that same incident. You state that you will release the police report to the husband, but claim that the submitted information is excepted from disclosure to the wife under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common law privacy, which 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.

The records at issue contain information that is considered highly intimate or embarrassing and is of no legitimate concern to the public. In most cases, only this information would be excepted from disclosure under section 552.101 in conjunction with common law privacy. In this instance, however, the requestor knows the nature of the incident in question as well as the identity of the individual involved. Therefore, withholding only the nature of the incident would not preserve the individual's common law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, we find that the city must generally withhold the submitted records in their entirety under section 552.101 of the Government Code in conjunction with common law privacy.

We note, however, that the submitted information reflects that the requestor is the wife of the individual to whom the submitted information pertains. As such, she may have a special right of access to the submitted information as the authorized representative of the individual to whom it pertains. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If the requestor is seeking the information on behalf of her spouse, then she has a right of access to the submitted information under section 552.023 and the city may not withhold any of this information on privacy grounds under section 552.101.

In summary, if the requestor is seeking the information on behalf of her spouse, then she has a right of access to the submitted information under section 552.023 and it must be released to her. Otherwise, the city must withhold the submitted information in its entirety pursuant to common law privacy in conjunction with section 552.101.

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,

José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 255502

Enc. Submitted documents

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