



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 19, 2007

Mr. Denis C. McElroy  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2007-09127

Dear Mr. McElroy:

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#284184.

The City of Fort Worth (the "city") received a request for a specified 9-1-1 recording and associated call sheet. You claim that the submitted 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." Gov't Code § 552.101. This section encompasses information protected by other statutes, like chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Section 772.218 of the Health and Safety Code applies only to an emergency 9-1-1 district established in accordance with chapter 772. See Open Records Decision No. 649 (1996). This statute makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2.

You state that the city is part of an emergency communication district that was established under section 772.218 and further inform us that the 9-1-1 callers' phone numbers and addresses that you have highlighted were furnished by a service provider. Thus, based on your representations and our review, we determine that the city must withhold the information you have marked pursuant to section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

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. *Id.* at 683. Based on your arguments and our review, we determine that a portion of the submitted information contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We have also indicated which information in the submitted audio recording must be withheld under section 552.101 and common-law privacy. In the event that the city does not have the technological capability to redact such information from the audio recording, we conclude that the city must withhold the audio recording in its entirety. We determine that no portion of the remaining information is highly intimate or embarrassing and of no legitimate concern to the public, and may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. The city must withhold the information we have marked in the submitted documents and audio recording under section 552.101 of the Government Code in conjunction with common-law privacy. If the city lacks the technical capability to redact this information from this audio recording, then the city must withhold the audio recording in its entirety. 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,



Holly R. Davis  
Assistant Attorney General  
Open Records Division

HRD/eeg

Ref: ID# 284184

Enc. Submitted documents

c: Ms. Rebecca Woods  
200 Kodiak Court  
Arlington, Texas 76013  
(w/o enclosures)