



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2008

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215-1815

OR2008-07275

Dear Ms. McClellan:

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# 311360.

The Dallas Police Department (the "department") received a request for information pertaining to two specified addresses, the requestor, and another named individual over a specified period of time. You claim that portions of the requested information are excepted from disclosure under section 552.101 and 552.130 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have marked information as not responsive to the instant request for information. We also note that other portions of the submitted information, which we have marked, are not responsive because they do not pertain to the specified addresses or named individuals. The department need not release non-responsive information in response to this request and this ruling will not address that information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

¹Although you do not claim section 552.130 in your brief, you have marked a portion of the submitted information under this exception. We therefore understand you to claim section 552.130 for the marked information.

Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 772.318 of the Health and Safety Code. You contend that the originating telephone numbers of 9-1-1 callers, contained in the submitted information, are excepted under section 552.101 in conjunction with section 772.318. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772, and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). We understand the City of Dallas to be part of an emergency communication district that was established under section 772.318, and that the 9-1-1 callers' telephone numbers were provided by a 9-1-1 service provider.² Thus, based on your representations and our review, we determine that the telephone numbers you have marked, as well as the information we have marked, are confidential pursuant to section 772.318 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses doctrine of common-law privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) 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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We agree that portions of the submitted information are highly embarrassing and not of legitimate public interest. However, while you assert that the criminal history compilation you have marked should be withheld, we note that the requestor is the individual to whom this criminal history pertains and therefore has a special right of access to his own private information. *See* Gov't Code § 552.023(b) (governmental body may not deny access

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

to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). The requestor's criminal history information, which we have marked, must be released to him. The remaining information you have marked, as well as the information we have marked, is also highly embarrassing and not of legitimate public interest. Accordingly, except where we have marked for release, the department must generally withhold the information you have marked, as well as the information we have marked, under section 552.101 in conjunction with common-law privacy.

We note, however, that the submitted information reflects that the requestor is the common-law spouse of the individual to whom the private information pertains. As such, the requestor may have a special right of access to information that would otherwise be protected based on his spouse's common-law right to privacy. *See id.* § 552.023; Open Records Decision No. 481 at 4 (1987) (person has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest). If the requestor is not requesting the submitted information on behalf of his spouse, then, except where we have marked for release, the department must withhold the information you have marked, as well as the information we have marked, under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the Texas motor vehicle record information you have marked under section 552.130.

In summary, the department must withhold the information you have marked, as well as the information we have marked, pursuant to section 552.101 in conjunction with section 772.318 of the Health and Safety Code. If the requestor is not requesting the submitted information on behalf of his spouse, then, except where we have marked for release, the department must withhold the information you have marked, as well as the information we have marked, under section 552.101 in conjunction with common-law privacy. The department must withhold the information you have marked under section 552.130 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 file suit in

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 311360

Enc. Submitted documents

c: Mr. Jayson Strange
9545 Glengreen
Dallas, Texas 75216
(w/o enclosures)