ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 8, 2008

Ms. Cherl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2008-13804

Dear Ms. Byles:

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# 324069.

The City of Fort Worth (the "city") received a request for all information related to a specified incident. You state you have provided most of the requested information to the requestor. You also state you have redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You further state you are withholding social security numbers under section 552.147 of the Government Code.[1] You claim portions of the submitted call for service reports and e-mails are excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have marked portions of the submitted information and indicated those portions are excepted under section 552.130 of the Government Code. We also note the types of information the city seeks to withhold under section 552.130 were not addressed in

[1]We note that section 552.147(b) 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.

the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 and 2007-00198. Thus, the city was required to submit comments explaining how this exception applies to the marked information. *See* Gov't Code § 552.301(e). You have not, however, submitted any such comments. Thus, we find the city failed to comply with the requirements of section 552.301 with respect to its claim under section 552.130. Generally, a governmental body's failure to comply with section 552.301 results in the waiver of its claim under the exception at issue. However, because section 552.130 is a mandatory exception to disclosure, we will consider the applicability of this exception, along with your claims under sections 552.101 and 552.137, to the submitted 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 Code § 552.101. Section 552.101 encompasses information made confidential by other statutes. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. You inform us the city is part of an emergency communication district established under section 772.218 of the Health and Safety Code. You also state the telephone numbers and address you have marked in the submitted call for service reports were provided by a 9-1-1 service supplier. Based on your representations, we conclude the city must withhold the marked telephone numbers and address under 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, which 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. We have marked portions of the remaining information that are considered highly intimate or embarrassing and not of legitimate public concern. Thus, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim some of the remaining information is confidential under section 552.130, which excepts from disclosure 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). Therefore, the city must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code.

You claim the remaining information includes e-mail addresses that are subject to section 552.137 of the Government Code, which excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses you have marked in the remaining information are not specifically excluded by section 552.137(c). As such, these e-mail addresses must be withheld under section 552.137, unless the owners of the addresses have affirmatively consented to their release. *See id.* § 552.137(b).

In summary, the city must withhold the marked telephone numbers and addresses under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code; the information marked under section 552.101 of the Government Code in conjunction with common-law privacy; the marked Texas motor vehicle record information under section 552.130 of the Government Code; and the marked e-mail addresses under section 552.137 of the Government Code, unless the owners of the addresses have consented to their release. 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). If the governmental body does not file suit over 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,

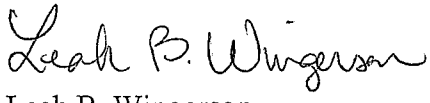
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/jh

Ref: ID# 324069

Enc. Submitted documents

c: Mr. Henry Moore
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(w/o enclosures)