



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2009

Mr. Richard L. Bilbie
Assistant City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2009-02462

Dear Mr. Bilbie:

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#335798.

The Harlingen Police Department (the "department") received a request for detailed information pertaining to calls for service to a named business during a specified time period. You state that you have previously released some information responsive to this request in response to a prior request for information from this requestor. Gov't Code § 552.232 (prescribing procedures for response to repetitious or redundant request for information). You claim that the submitted detailed call log is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed 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." *Id.* § 552.101. This exception encompasses the doctrine of common-law 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. 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 addition, this office has found that 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). We note the common-law right to privacy is a personal right that lapses at death, and therefore it does not encompass information that relates to a deceased individual. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex.App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981). Upon review, we find that most of the submitted information pertains to individuals who are either not identified or deceased. This information does not implicate any individual's privacy interest and may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Further, upon review, we find that the remaining information that does identify living individuals is not intimate or embarrassing and is of legitimate public interest. Accordingly, the department may not withhold any information in the submitted detailed call log under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we address your claim that the submitted detailed call log is excepted from disclosure under sections 552.108(a)(1) and 552.108(b)(1) of the Government Code. These sections provide:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming section 552.108(a)(1) or section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). However, section 552.108 is limited by section 552.108(c), which provides that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Basic information refers to the information set forth in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976).

See also Open Records Decision No. 127 (1976) (summarizing types of information not excepted from disclosure by 552.108 in *Houston Chronicle*). In Open Records Decision No. 649 at 3 (1996), this office concluded that information contained in a police dispatch record, such as the detailed call log at issue in this instance, is substantially the same as basic information and is not excepted from public disclosure under section 552.108. *See also* Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in police dispatch records or radio logs and front page offense report information expressly held to be public in *Houston Chronicle*, and thus, such information is generally public). You state that the information in submitted detailed call log "could identify the events of a crime through later analysis of the calls." You also contend that release of "police-department shorthand with phrases, terms and numbers that are meant for internal consumption" in the submitted detailed log would "reveal police methods and techniques" and "police strategies." However, because the detailed call log is basic information, it may not be withheld under section 552.108 of the Government Code.

Next, you assert that the submitted detailed call log is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). In ORD 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, and opinions that reflect the policymaking processes of the governmental body. *See* Open Records Decision No. 615 at 5. In this instance, the information you seek to withhold under section 552.111 consists of notations by department 9-1-1 dispatchers concerning the facts and circumstances surrounding 9-1-1 calls received by the department. Upon review, we find that you have failed to demonstrate that the submitted detailed call log consists of advice, recommendation, and opinion that reflects the policymaking processes of the department. Accordingly, the department may not withhold the submitted detailed call log under section 552.111 of the Government Code.

We note that the submitted information appears to contain information subject to section 552.130 of the Government Code.¹ This section excepts from disclosure information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. We note that

¹The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.130 does not apply to out-of-state motor vehicle record information. We also note that section 552.130 protects the privacy interests of individuals, and because the right of privacy is purely personal, it lapses upon death. *Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229 (1984), H-917 (1976); ORD 272. In this instance, we are unable to discern whether the information we have marked consist of Texas license plate numbers of living individuals. Therefore, to the extent the information we have marked consists of Texas license plate numbers of vehicles owned by living individuals, it must be withheld under section 552.130 of the Government Code. If the marked information is not a Texas license plate number, or if the owner of the information is deceased, the department may not withhold it under section 552.130. As you raise no further exceptions against disclosure of the remaining submitted information, it must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 335798

Enc. Submitted documents

cc: Requestor
(w/o enclosures)