ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2009

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

OR2009-04254

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# 338611.

The City of Fort Worth and the Fort Worth Police Department (collectively the "city") received two requests for a specified incident report, and a request for call sheets related to two specified incidents. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that social security numbers and Texas driver's license numbers have been redacted from the submitted documents. The city is authorized to redact social security numbers pursuant to section 552.147(b) of the Government Code and Texas motor vehicle record information pursuant to previous determinations issued to the city under section 552.130 of the Government Code in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007).[1]

Next, 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 the doctrine of common-law privacy,

[1]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.

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. *Id.* at 683. In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify the victim. *See also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy; however, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decisions Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986). In this instance, the requestor whose request you have marked 1460-09 ("requestor number 1460-09") knows the identity of the sexual assault victim. Therefore, withholding only the alleged victim's identity or certain details of the incident from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, the city must withhold incident report number 09-1318 in its entirety, in addition to the related call sheets we have marked, from requestor number 1460-09 pursuant to section 552.101 in conjunction with common-law privacy.

However, we note that the requestor in the request you have marked 1981-09 ("requestor number 1981-09") is the individual to whom the private information pertains. As such, this requestor has a special right of access to private information concerning herself under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).[2] Thus, the city may not withhold incident report number 09-1318 from requestor number 1981-09 on the basis of common-law privacy.

However, you claim the information in incident report number 09-1318 is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2)

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[2]Section 552.023 of the Government Code provides that a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(b). If the city receives another request for this information from a person who would not have a special right of access to this information, then the city should resubmit this same information and request another decision. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that incident report number 09-1318 relates to an investigation that did not result in prosecution. Based on your representation and our review, we conclude that section 552.108(a)(2) is applicable to incident report number 09-1318.

However, section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public 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); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold incident report number 09-1318 from requestor number 1981-09 under section 552.108(a)(2).[3]

In regard to the request marked 1983-09[4], you claim the information in the remaining call sheet is also excepted from disclosure under section 552.108(a)(2). You inform us that "the call sheets are related as an ongoing situation." Upon review, we are unable to determine that the investigation related to the call sheet at issue concluded in a result other than conviction or deferred adjudication. Thus, we find that you have not established the applicability of section 552.108(a)(2) to the information in the remaining call sheet. Therefore, the city may not withhold the remaining call sheet under section 552.108(a)(2).

Finally, you claim that portions of the remaining call sheet are excepted from disclosure under section 552.101 in conjunction with section 772.218 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication 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

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[3]We note that some of the information being released is confidential and is not subject to release to the general public. However, the requestor in this instance has a special right of access to this information. *See* Gov't Code § 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the city receives another request for this information from an individual other than this requestor, the city must again seek a ruling from this office.

[4]The requestor who submitted the request you have numbered 1983-09 will hereinafter be referred to as "requestor number 1983-09."

telephone numbers and addresses of 9-1-1 callers 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.

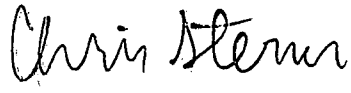
You state that the city is part of an emergency communication district established under section 772.218. You indicate that the telephone numbers that you have marked are related to 9-1-1 calls and were obtained from a 9-1-1 service provider. Based on your representations, we conclude that the city must withhold the originating telephone numbers you have marked in the remaining call sheet under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

In summary, (1) the city must withhold incident report number 09-1318 in its entirety, in addition to the related call sheets we have marked, from requestor number 1460-09 pursuant to section 552.101 of the Government Code in conjunction with common-law privacy; (2) with the exception of basic information, the city may withhold incident report number 09-1318 from requestor number 1981-09 under section 552.108(a)(2) of the Government Code; and (3) the city must withhold the originating telephone numbers you have marked in the remaining call sheet under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. The remainder of this call sheet must be released to requestor number 1983-09.

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 338611

Enc. Submitted documents

c: Requestor (2)
(w/o enclosures)