



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-16216

Dear Mr. Phillips:

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#361350 (City of Fort Worth Public Information Request Nos. 5442-09 and 5443-09).

The City of Fort Worth (the "city") received two requests for records related to report number 090503461, South Talk group audio, officer radio frequency for a specified time frame, all logs tracking radio traffic, and mobile data computer information for a specified time period. You state you are releasing some information to the requestor. You also state that the city has redacted Texas motor vehicle record information pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007) and social security numbers pursuant to section 552.147 of the Government Code.¹ See Gov't Code §§ 552.147 (b), 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (previous determinations). We note that you have also redacted what appears to be personal information about a peace officer pursuant to section 552.117(a)(2) of the Government Code. The previous determination issued in Open Records Decision No. 670 (2001) authorizes the city to withhold the home addresses, telephone numbers, personal cellular phone and pager numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision.² See Open Records Decision No. 670 at 6. You

¹We 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.

²We note that section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

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. We have also received and considered comments from the requestor. *See* Gov't Code §552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that the requestor contends, among other things, that the city did not comply with the procedural requirements of the Act in requesting a decision from this office. The requestor asserts that the city failed to comply with section 552.301(b) of the Government Code. Section 552.301 requires a governmental body that desires to withhold information under the Act to ask for the attorney general's decision and state the exceptions that apply no later than ten business days after the date of receiving the written request. In this instance, the city certifies that they received the request for information on August 27, 2009. The city also represents that its offices were closed on September 7, 2009. Accordingly, the tenth business day by which the city was required to request a decision from this office was September 11, 2009. *See id.* § 552.308(a) (ten-day requirement met if request bears post office cancellation mark indicating time within ten-day period). The city's request for a decision from this office was postmarked on September 9, 2009. Upon consideration of the requestor's comments and review of the submitted information, we conclude that the city fully complied with the requirements of section 552.301 of the Government Code in requesting this decision.³

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007 provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

³We note, for the requestor's benefit, that the city only raises mandatory exceptions to disclosure. Unlike discretionary exceptions that protect the interests of the governmental body, mandatory exceptions protect the interests of third parties and cannot be waived by the governmental body's failure to timely submit required information. Thus, even if the city's request had been untimely, this office would still have been compelled to address the merits of the city's arguments. *See* § Gov't Code 552.302; Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). We find that information you have marked involves conduct indicating need for supervision, so as to fall within the scope of section 58.007(c). *See id.* § 51.03(b) (defining "conduct indicating need for supervision" for purposes of title 3 of the Family Code). Thus, the information you have marked is confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 also encompasses 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 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 number you have marked is related to a 9-1-1 call and was obtained from a 9-1-1 service provider. Based on your representations, we conclude that the city must withhold the originating telephone number you have marked 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. 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. 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 personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 600 (1992), 545 (1990)*. Additionally, this office has found some kinds of medical information or information indicating disabilities or

specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (information pertaining to illness from severe emotional and job-related stress protected by common-law privacy), 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Upon review, we find that the information you have marked is not highly intimate or embarrassing. Therefore, the city may not withhold this information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates 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). The submitted dispatch audio recording contains Texas motor vehicle record information that is subject to section 552.130. The city must withhold the information we have indicated under section 552.130 of the Government Code.

In summary, the city must withhold the information you have marked under 552.101 in conjunction with section 58.007 of the Family Code. The city must withhold the originating telephone number you have 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 Texas motor vehicle information we have indicated in the submitted audio recording under section 552.130 of the Government Code. The remaining information 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, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/eb

Ref: ID# 361350

Enc. Submitted documents

cc: Requestor
(w/o enclosures)