



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2013

Ms. Rachel L. Lindsay
For the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2013-01124

Dear Ms. Lindsay:

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# 476457.

The McKinney Police Department (the "department"), which you represent, received a request for 9-1-1 call recordings and information pertaining to a specified incident. You 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.

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. This section encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which reads 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;
- (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). For purposes of section 58.007(c), a “child” is defined as a person ten years of age or older and under seventeen years of age at the time of the reported conduct. *Id.* §§ 51.02(2)(A), .03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). Upon review, we find the submitted information does not identify a juvenile suspect or offender for purposes of section 58.007, nor have you explained how the juvenile involved engaged in conduct indicating a need for supervision as defined by section 51.03 of the Family Code. *See id.* § 51.03(a), (b); *see also* Open Records Decision No. 422 at 2 (1984) (attempted suicide is not a crime in Texas). Accordingly, we conclude you have not demonstrated the applicability of section 58.007(c) of the Family Code to the submitted information. Consequently, the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 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. Sections 772.118, 772.218, and 772.318 are not applicable, however, to information furnished by the 9-1-1 caller. *Id.* at 2; *see* ORD 649 at 3 (language of confidentiality provision controls scope of its protection). Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

When asserting section 772.118, 772.218, or 772.318 of the Health and Safety Code, a governmental body must indicate whether it is part of a 9-1-1 district subject to that section, and whether the originating addresses and telephone numbers of the 9-1-1 callers were supplied by a 9-1-1 service supplier to that 9-1-1 district. *See* Gov’t Code § 552.301(e). You assert the submitted information consists of audio recording of 9-1-1 calls containing addresses and a telephone number of 9-1-1 callers, which were provided to the department by a 9-1-1 service supplier. However, you do not inform us whether the City of McKinney is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. Furthermore, we find the addresses and telephone number on the submitted audio recordings were provided by the callers and not by a service provider. Accordingly, the department may not withhold the addresses and telephone number on the audio recordings under section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 demonstrated. *See id.* at 681-82. The type of information considered intimate or 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. Upon review, we find portions of the submitted audio recordings, which we have indicated, are highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the indicated information under section 552.101 of the Government Code in conjunction with common-law privacy. As no other exceptions to disclosure are raised, the department must release the remaining information.

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_or1.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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 476457

Enc. Submitted documents

c: Requestor
(w/o enclosures)