



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2013

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

OR2013-06534

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# 484697 (ORR# 10-6775).

The McKinney Police Department (the "department"), which you represent, received a request for information pertaining to case number 12-008555. You claim 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 exception encompasses information other statutes make confidential. Section 261.201 of the Family Code provides in part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We understand you to contend the submitted information is subject to chapter 261 of the Family Code because the incident at issue was reported to the Child Protective Services Division of the Department of Family and Protective Services. However, the submitted information pertains to a case of assault involving two adults and you have failed to demonstrate the information at issue consist of a report of alleged or suspected child abuse or neglect made under chapter 261 of the Family Code or information used or developed in an investigation under chapter 261. We therefore conclude the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 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 includes an audio recording of a 9-1-1 call containing an address and a telephone number of a 9-1-1 caller, which were provided to the department by a 9-1-1 service supplier. However, you do not inform us whether the City of McKinney (the "city") 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. Upon review, we find the address on the submitted audio recording was provided by the caller and not by a service provider. Accordingly, the department may not withhold the address on the audio recording under section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code. With regards to the telephone number, we rule conditionally. If the city is part of an emergency communication district established under chapters 772.118, 772.218, or 772.318 of the Health and Safety Code, then the department must withhold the partial telephone number furnished by a service supplier under

section 552.101 of the Government Code in conjunction with section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. But if the city is not part of an emergency communication district established under section 772.118, section 772.218, or section 772.318, then the department may not withhold the partial telephone number at issue under section 552.101 on the basis of sections 772.118, 772.218, or 772.318.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information if it (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). 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 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. *See* 540 S.W.2d 668, 683. 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 No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, this information must be withheld under section 552.101 in conjunction with common-law privacy. However, none of the remaining information is highly intimate or embarrassing information of no legitimate public interest. Thus, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license issued by an agency of this state or another state or country is excepted from public release.¹ *See* Gov't Code § 552.130(a)(1). The department must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, if the city 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, then the department must withhold the partial telephone number furnished by a service supplier under section 552.101 of the Government Code in conjunction with sections 772.118, 772.218, or 772.318 of the Health and Safety Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with

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

common-law privacy and the driver's license information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 484697

Enc. Submitted documents

c: Requestor
(w/o enclosures)