ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 7, 2011

Mr. Don Cheatham
General Counsel
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-08083

Dear Mr. Cheatham:

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# 419953 (Houston GC No. 18433).

The City of Houston (the "city") received a request for a specified dispatch report pertaining to a particular 9-1-1 call. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have submitted an audio recording of the 9-1-1 call labeled as Exhibit 2. The present request for information is for a specified dispatch report; thus, the submitted audio recording is not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release such information.
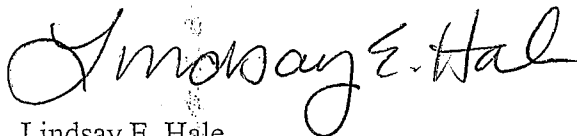
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the common-law right of privacy, which protects information if it (1) contains 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 established. *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 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) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Whether information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983). Upon review, we find that the information we have marked in the submitted report labeled as Exhibit 3 is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions, the city must release the remaining responsive 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_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,

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 419953

Enc.   Submitted documents

c: Requestor
        (w/o enclosures)