



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 6, 1998

Mr. William M. Toles
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
City Hall, 1500 Marilla
Dallas, Texas 75201

OR98-1578

Dear Mr. Toles:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116515.

The Dallas Police Department (the "department") received an open records request for records pertaining to ten internal affairs investigations. You state that most of the requested information will be released to the requestor. You seek to withhold from the requested files, however, the cellular telephone numbers of police officers and the telephone numbers called by police officers on the cellular telephones. We infer from your arguments that you intend to assert the applicability of section 552.108 with regard to this information.¹

Section 552.108 of the Government Code, as amended by the Seventy-fifth Legislature, exempts from required public disclosure.

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

¹We also note that criminal history record information obtained from the NCIC and TCIC is made confidential under federal and state law. *See generally* Open Records Decision No. 565 (1990) at 10-12.

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Although you have not cited any particular subsection of section 552.108, this office has previously concluded that the "law-enforcement exception" generally protects from required public disclosure the cellular mobile phone numbers assigned to public and private vehicles used by public officials and employees with specific law enforcement responsibilities. *See* Open Records Decision No. 506 (1988). The department therefore may withhold the police officers' cellular telephone numbers pursuant to section 552.108.

This office has also addressed the extent to which telephone numbers that police officers call on the cellular telephones is public information. In Open Records Decision No. 636 (1995), this office concluded that:

a cellular telephone bill does not explain on its face how its release would unduly interfere with law enforcement and crime prevention. Therefore, to claim the section 552.108 exception for this information, a governmental body must do two things: (1) mark the information it claims would tend to identify a confidential informant or would unduly interfere with law enforcement and crime prevention if released, and (2) detail how release of that marked information would identify the informant or unduly interfere with law enforcement. Without this information, the governmental body will not have met its burden under section 552.108. *A generalized explanation is insufficient; the governmental body's argument must be addressed to the particular records requested or the portions of those particular records for which the governmental body is claiming the section 552.108 exception.* Open Records Decision No. 434 (1986). [Emphasis added; footnotes omitted.]

In this instance you have not explained how the release of specific telephone numbers called on the cellular telephones would interfere with law enforcement beyond a "generalized explanation." We therefore conclude that you have not met your burden of demonstrating the applicability of section 552.108 to those telephone numbers. However, the department must withhold pursuant to section 552.117(2) of the Government Code all home telephone numbers of police officers, as well as the officers' home addresses, social security numbers, and any information that would reveal whether the officers' have family members to the extent these types of information are contained in the records at issue. *See* Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988).

You next seek to withhold IAD file 96-239 pursuant to section 552.108 because you contend that the file "deals with a [criminal] case that has not been closed." In support of your contention, you have submitted to this office a letter from an assistant district attorney asking that the file not be released because "release of this information would interfere with future prosecution" that is set for August 20, 1998. We have reviewed the file at issue, but it is not apparent to this office, nor have you explained, how this IAD file pertains to a criminal matter. Although the criminal matter that is scheduled for trial is referenced in the IAD report, all of the actions of the officer under scrutiny occurred after the criminal defendant had been booked into jail and are unrelated to that particular criminal offense.

Because neither you nor the assistant district attorney have explained how the release of this IAD file would interfere with the pending criminal matter, we conclude that you have not met your burden of establishing that the release of this file would interfere with the prosecution of that case. Consequently, the department must release this file.

You next seek to withhold IAD file 93-406F pursuant to former section 51.14(d) of the Family Code because you contend that the file constitutes a "juvenile law enforcement record." *See generally* Open Records Decision No. 644 (1996). Our review of this file did not, however, reveal any information pertaining to a juvenile suspected of delinquent conduct. *See* Fam. Code § 51.02(2) (defining "child"). We therefore conclude that section 51.14(d) is inapplicable and the file must be released.

You contend that IAD file 95-435F should be withheld from the public pursuant to section 261.201 of the Family Code because it relates to an investigation of an abandoned child. Section 261.201(a) of the Family Code provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this 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 [of a child] made under this chapter 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 this chapter or in providing services as a result of an investigation.* [Emphasis added.]

Although this file contains the type of information that is typically made confidential by section 261.201, the records of the IAD investigation were created after the department's investigation was concluded. We therefore do not believe that these records may be characterized, in their entirety, as having been "used or developed in an investigation" under chapter 261 of the Family Code. We have marked the information pertaining to the investigation that the department must withhold because it directly pertains to the child endangerment investigation. The department must also withhold the tape recordings relating to this file pursuant to section 261.201 of the Family Code. The remaining information in this file must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/RWP/mjc

Ref: ID# 116515

Enclosures: Submitted documents

cc: Ms. Sita Horn
2905 Cummings
Dallas, Texas 75216
(w/o enclosures)