

January 29, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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JOHN CORNYN
Attorney General

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P.O. Box 12548
Austin, Texas
78711-2548

(512) 463-2100
www.oag.state.tx.us

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Division
Office of the City Attorney
501 Police & Courts Bldg.
Dallas, Texas 75201

OR99-0281

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121460.

The City of Dallas Police Department (the "DPD") received a request for "completed IAD investigations for control number 92-221F and 92-465." You submit to this office the requested information and assert that portions of the requested information are exempt from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality statutes. Several of the submitted documents are confidential by statute and must be withheld from disclosure pursuant to section 552.101.

First, the submitted documents include medical records. Medical records created or maintained by a physician are confidential under the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Medical records may be released only in accordance with the MPA. *See* V.T.C.S. art. 4495b, §§ 5.08(c), (j); Open Records Decision No. 598 (1991).

Second, one of the documents at issue is a polygraph report. Section 19A(b), article 4413(29cc) of Vernon's Texas Civil Statutes provides as follows:

Except as provided by Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person information acquired from the examination.

Both polygraph reports and references to polygraph results are confidential under section 19A(b), and the DPD must withhold such information from disclosure pursuant to section 552.101 of the Government Code.

Third, section 552.101 encompasses the common-law right to privacy. Information is protected by the common-law right to privacy if (1) the information is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 at 1 (1992). We have marked the documents to indicate the information that is protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (common-law right to privacy protects some personal financial information).

You argue that some of the requested information is excepted from disclosure under section 552.108 of the Government Code. You contend the following:

Release of the names of civilian witnesses who provided information to the DPD could interfere with future investigations by the Internal Affairs Divisions because of the possible exposure of these witnesses to public harassment and/or retaliation. This would have a chilling effect on potential witnesses and seriously hamper DPD's ability to conduct thorough investigations in the future.

Section 552.108 of the Government Code provides in part as follows:

(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 is excepted from the requirements of Section 552.021 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 the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You seek to withhold the names of civilian witnesses under section 552.108(b)(1) as internal information held by a law enforcement agency for internal use in a matter related to law enforcement or prosecution. However, section 552.108(b)(1) protects information only when its release would interfere with law enforcement or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (construing statutory predecessor to section 552.108). You have not demonstrated that release of the names of civilian witnesses would interfere with law enforcement or prosecution. Thus, we conclude that section 552.108 does not except the names of civilian witnesses from disclosure.

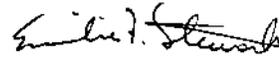
You assert that some of the information at issue is excepted from disclosure pursuant to section 552.117 of the Government Code. Section 552.117(2) provides for the confidentiality of the home addresses, home telephone numbers, and social security numbers of peace officers, as well as information that reveals whether the peace officer has family members. The protection of section 552.117 is automatic for peace officers. However, the subject of control number 92-221F is also the subject of arrest and offense reports. Generally, basic information concerning an offense is public. *See generally Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. In this situation, because the peace officer has been investigated for a possible criminal action, we believe that section 552.117(2) does not apply to the information in control number 92-221F. Nevertheless, information in control number 92-465F that is protected by section 552.117(2) remains protected from disclosure from that file.

Finally, you argue that the requested information includes 911 call reports and the originating telephone numbers and addresses of 911 calls are protected from disclosure by section 772.318 of the Texas Health and Safety Code. We believe that a prior ruling, Open Records Letter No. 98-2551 (1998) answers your questions concerning originating telephone numbers and addresses on 911 call reports. You may rely upon Open Records Letter No. 98-2551 (enclosed) as a previous determination on this issue under section 552.301 of the Government Code and thus need not ask this office again for a decision concerning these types of records.

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,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 121460

Enclosures: OR98-2551, marked documents

cc: Mr. Jason Sickles
Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(with OR98-2551)