



February 8, 1999

Ms. J. Middlebrooks
Criminal Law & Police Division
City of Dallas
2014 Main Street, Rm 501
Dallas, Texas 75201

OR99-0368

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 121628.

The City of Dallas Police Department (the "department") received a request for the following information "[a]ny and all information dealing with Officer Charles R. Bailey and previous investigations by the Dallas Police Department over allegations of conduct unbecoming of an officer." In response to the request, you submit to this office for review the records at issue consisting of three specified internal affairs ("IAD") investigations. You assert that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. Based on a review of the requested information, we agree that information identifying juvenile complainants, victims, and witnesses, including names, addresses, phone numbers, and names of relatives, who were witnesses in the IAD investigations, should be withheld under section 552.101 in conjunction with the common-law right of privacy. *See generally* Open Records Decision No. 339 (1982) (information pertaining to incident of sexual assault raises issue of common-law privacy). We advise you to withhold the information accordingly. Gov't Code § 552.352 (distribution of confidential information is a criminal offense).

Section 552.101 also encompasses information protected by other statutes. We next consider your arguments against disclosure of the records involving a juvenile. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records.¹ Law enforcement records pertaining to juvenile conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). A portion of the submitted records pertains to juvenile conduct that occurred before January 1, 1996. Section 51.14(d) provides in pertinent part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [of a child] are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

In Open Records Decision No. 181 at 2 (1977), this office held that former section 51.14(d) excepts police reports which identify juveniles or furnish a basis for their identification. *See also* Open Records Decision No. 394 at 4-5 (1983) (applying former Fam. Code § 51.14(d) to “police blotter” and related information). You do not indicate that the records at issue here relate to charges for which the department transferred the juvenile under section 54.02 of the Family Code² to a criminal court for prosecution, or that article 15.27 of the Code of

¹We note that the Seventy-fourth Legislature repealed section 51.14 of the Family Code and replaced it with section 58.007 of the Family Code. The Seventy-fifth Legislature, however, amended section 58.007 once again to make juvenile law enforcement records confidential, effective September 1, 1997. Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187 (Vernon).

²Act of May 25, 1973, 63d Leg., R.S., ch. 544, § 1, 1973 Tex. Gen. Laws 1460, 1476-77, amended by Act of May 19, 1975, 64th Leg., R.S., ch. 693, §§ 15-16, 1975 Tex. Gen. Laws 2152, 2156-57 (adding subsecs. (m), (j), (k), (l)), amended by Act of May 8, 1987, 70th Leg., R.S., ch. 140, §§ 1-3, 1987 Tex. Gen. Laws 309 (amending subsecs. (a), (h), (j)).

Criminal Procedure³ applies. Moreover, it does not appear that any of the exceptions to former section 51.14(d) apply to the requestor. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (formerly Fam. Code § 51.14(d)(1), (2), (3)). In this case, section 51.14(d) makes the submitted juvenile department records confidential. Therefore, we conclude that the department must withhold the juvenile records at issue, which appear to consist of nine pages within IAD file number 94-041F. The remaining portion of this IAD file may not be withheld under this confidentiality provision.

We next consider your argument against disclosure of “Originating Telephone Numbers and Addresses for 9-1-1 Calls.” 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. *See* Open Records Decision No. 649 (1996). 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.

You claim that “[s]pecific identifiers of civilian witnesses such as their names, addresses, and telephone numbers are protected,” from disclosure by section 552.108, the “law enforcement exception.” Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). However, we note that section 552.108 is not applicable when no criminal investigation is undertaken. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied); Open Records Decision No. 350 (1982). Furthermore, this office has determined that section 552.108 does not protect general personnel information from public disclosure. Open Records Decision No. 562 at 10 (1990) (applying predecessor statute). Because you have not shown the applicability of section 552.108 to the “civilian witnesses,” we conclude that such information, other than the complainants and witnesses addressed above under section 552.101, is not protected by the law enforcement exception.

You also seek to withhold the cellular telephone numbers of police officers. 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.

³Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 1, 1993 Tex. Gen. Laws 1850-51.

Finally, we must consider whether some of the requested information must be withheld pursuant to section 552.117 of the Government Code.⁴ Gov't Code § 552.352 (distribution of confidential information is a criminal offense). Section 552.117(2) of the Government Code excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members. Therefore, we conclude that the information subject to section 552.117(2) must be withheld. Gov't Code § 552.352.

All of the requested information not specifically addressed above must be released to the requestor in its entirety. 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/nc

Ref.:ID# 121628

cc: Ms. Shonda Lee
KDFW-TV
400 N. Griffin Street
Dallas, Texas 75202
(w/o enclosures)

⁴Although you raised section 552.101 and common-law privacy to withhold "information regarding the existence of family members of a peace officer," we will address your concerns under section 552.117 which is the more specific applicable exception. The Office of the Attorney General will raise an exception on behalf of a governmental body when necessary to protect third-party interests. See *generally* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).