



September 4, 2001

Ms. J. Middlebrooks
Assistant City Attorney
City of Dallas
2014 Main, Room 501
Dallas, Texas 75201

OR2001-3899

Dear Ms. Middlebrooks:

You have asked whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 151467.

The Dallas Police Department (the "department") received a request for "any and all documents relating to the internal investigation report that resulted in the termination of" a named officer. You assert that the information is excepted from public disclosure under sections 552.101, 552.117, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

First, you claim that photographs of officers contained within the investigation file are excepted from disclosure under section 552.119 of the Government Code. Section 552.119 excepts from public disclosure a photograph of a peace officer² that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure.

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

² "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

Open Records Decision No. 502 (1988). There need not be a threshold determination that release of the photographs would endanger the officers. *Id.* You have not informed us that the peace officers depicted in the photographs executed written consents to disclosure of their pictures. Assuming they have not, the photograph of the current officer must not be released. Additionally, if the officer who has been terminated remains a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure or a security officer commissioned under section 51.212 of the Education Code, his photograph must not be released. However, if he is no longer a peace officer as defined by article 2.12, his photograph must be released.

The file also contains the terminated officer's home address which you claim is excepted under section 552.117 of the Government Code. In relevant part, section 552.117 provides as follows:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024[.]

Gov't Code § 552.117(2). If the terminated officer remains a licensed police officer as defined by article 2.12 of the Code of Criminal Procedure or a security officer commissioned under section 51.212 of the Education Code, his home address must not be released. If he is no longer a licensed officer, his address may be excepted under section 552.117(1). Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the department must release the terminated officer's address if he did not make a request for confidentiality under section 552.024 of the Government Code prior to the date on which the request for this information was made.

The investigation file also contains Texas personal identification, vehicle identification, and license plate numbers, which you claim are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 of the Government Code prohibits the release of information that relates to a driver's license, personal identification document or a motor vehicle title or registration issued by an agency of this state. Therefore, under section 552.130, the department must withhold the personal identification, vehicle identification, and license plate numbers contained within the file.

You claim that 9-1-1 caller information in the file is excepted from disclosure under section 772.318 of the Health and Safety Code. Section 772.318 of the Health and Safety Code, one of several confidentiality provisions in chapter 772 of the Health and Safety Code, makes some of the requested information confidential. As you raise this section, we assume that the emergency 911 district involved here was established in accordance with chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 911 callers furnished by a service supplier. *See* Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. Health & Safety Code §§ 772.401, *et seq.* Thus, if the emergency communication district here is subject to section 772.118, 772.218, or 772.318, the originating telephone numbers and addresses on the reports are excepted from public disclosure based on section 552.101 as information deemed confidential by statute.

Finally, you claim that accident reports contained in the file are excepted from disclosure by section 550.065(b) of the Texas Transportation Code. Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 1544, § 5 (to be codified at Transp. Code § 550.065(c)(4)). Under this provision, a law enforcement agency employing a peace officer who made an accident report is required to release a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the department with two of the three pieces of information. Thus, you must withhold the accident report under section 550.065(b).

In summary, peace officers' photographs are excepted under section 552.119 if they are peace officers as defined by article 2.12 of the Code of Criminal Procedure. A peace officer's home address is excepted under section 552.117(2) if he is a peace officer as defined by article 2.12 of the Code of Criminal Procedure. If he is no longer a peace officer as defined by article 2.12, then his home address is excepted under section 552.117(1) if he timely elected under section 552.024. The department must withhold the personal identification, vehicle identification, and license plate numbers under section 552.130.

The originating addresses and telephone numbers of 9-1-1 callers are confidential under section 772.118, 772.218, or 772.318 of the Health and Safety Code. Lastly, the department must withhold the accident reports under section 550.065(b) of the Transportation Code. All other information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/KLA/sdk

Ref: ID# 151467

Enc: Submitted documents

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