



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 15, 2003

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2003-2546

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# 179479.

The Dallas Police Department (the "department") received a request for copies of a variety of information pertaining to thirty-five service numbers. You claim that some of the requested information is excepted from disclosure pursuant to sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted representative sample documents.¹

Initially, we note that the submitted report associated with service number 0359260-L is subject to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.² Section 261.201 provides in part:

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 Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

(a) 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 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.

Fam. Code § 261.201(a). The report associated with service number 0359260-L constitutes a report and investigation of alleged or suspected abuse made under chapter 261. We assume that the department has not adopted a rule that governs the release of this type of information. Given that assumption, we conclude that the department must withhold the report associated with this service number in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (applying predecessor statute).

You claim that the remaining submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108 provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) as an exception to disclosure of requested information must demonstrate, 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 or prosecution. *See* Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information involves several offenses that department officers are currently investigating and includes cases that are pending prosecutions with the Dallas County District Attorney's office. Based on our review of your representations and the reports associated with service numbers 0536608-L, 0865612-L, and 0865845-L, we find that the release of most portions of these reports "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). Thus, we agree that section 552.108(a)(1) is applicable to these three particular reports.

Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or a deferred adjudication. *See* Gov't Code § 552.108(a)(2). You represent that the report associated with service

number 0660634-L pertains to an investigation that did not result in conviction or deferred adjudication because the Dallas County Grand Jury issued a "no-bill" regarding this case. Therefore, we understand from your representations that the department contends that this report relates to a case that has concluded in a final result other than conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to this particular report.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). Accordingly, with the exception of basic information that must be released to the requestor from the reports, we conclude that the department may withhold the reports associated with service numbers 0536608-L, 0660634-L, 0865612-L, and 0865845-L pursuant to section 552.108 of the Government Code. Because we base our ruling on sections 552.101 and 552.108, we need not address your remaining claimed exceptions to disclosure.³

In summary, the department must withhold the report associated with service number 0359260-L in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information that must be released to the requestor from the reports, the department may withhold the remaining submitted reports pursuant to section 552.108 of the Government Code.

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

³ We note that "basic information" may not generally be withheld from disclosure under section 552.103 of the Government Code. *See* Open Records Decision Nos. 597 (1991), 362 (1983).

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 Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 179479

Enc. Submitted documents

c: Mr. Joe D. Morris
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