



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 20, 2003

Ms. J. Middlebrooks
Assistant City Attorney
Dallas Police Department
1400 South Lamar Street, #300A
Dallas, Texas 75215-1801

OR2003-3380

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# 181334.

The Dallas Police Department (the "department") received a request for four categories of information pertaining to the narcotics division during a specified time frame: (1) total payouts to confidential informants by the narcotics division; (2) confidential informant payment forms for the 10 largest confidential informant payments executed in 2002; (3) annual activity reports for complaints, seizures (vehicles, weapons, and currency), arrests, and operations; and (4) annual seizure reports for various narcotics. You claim that part of the requested information, the internal records of transactions between department narcotics officers and confidential informants, is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We assume that the department has released the remaining responsive information to the extent that it exists. If you have not, you must do so at this time. *See Gov't Code §§ 552.021, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances).* We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

¹We 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.

Initially, we note that it appears you have already requested decisions from this office regarding the public availability of at least some of the requested information. We ruled on requests similar to the one at issue in Open Records Letter Nos. 2002-2736 (2002), 2002-2724 (2002), 2002-2339 (2002), and 2002-2148 (2002). In those rulings, this office determined that some information regarding payments made to confidential informants was excepted from disclosure under sections 552.101 and 552.108 of the Government Code. To the extent the information responsive to the instant request is identical to information we previously determined was excepted in Open Records Letter Nos. 2002-2736 (2002), 2002-2724 (2002), 2002-2339 (2002), and 2002-2148 (2002), and the law, facts, and circumstances surrounding those rulings have not changed since their issuance, we find that you may rely on our prior rulings to withhold the submitted information. *See* Open Records Decision No. 673 (2001). To the extent the submitted information is not subject to a previous determination, we will address your claimed exceptions.

We next note that section 552.022 of the Government Code makes certain information public, unless it is expressly confidential under other law. One category of public information under section 552.022 is information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body. Gov't Code § 552.022(a)(3). The submitted information is subject to section 552.022(a)(3). As section 552.108 is a discretionary exception, it is not considered "other law" for the purpose of section 552.022(a)(3). Consequently, the submitted information may not be withheld under section 552.108. The department may withhold this information only if it is confidential under other law. Thus, we address whether any of the submitted information subject to section 552.022(a)(3) must be withheld under section 552.101 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the common-law right of privacy. Ordinarily, information is protected by common-law privacy only if (1) the information contains highly intimate or embarrassing facts, the release of which 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). However, information also may be withheld under section 552.101 in conjunction with common-law privacy upon a showing of certain "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* You inform us that the department's narcotics officers and informants have infiltrated criminal groups. You assert that the involved officers and informants would face an imminent threat of physical danger if their identities and specific undercover activities were released to the public. We conclude that, the badge numbers and names of the undercover narcotics officers and the names and

numbers of the confidential informants, which you have circled, are confidential under section 552.101 in conjunction with common-law privacy and must be withheld from the requestor. *See* Open Records Decision No. 169 (1977). The remaining 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).

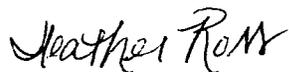
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 181334

Enc: Submitted documents

c: Mr. Robert Tharp
Dallas Morning News
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(w/o enclosures)