



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2004

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar Street #300A
Dallas, Texas 75215-1801

OR2004-3322

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# 199987.

The Dallas Police Department (the "department") received two requests, for "the operational review conducted by the [department] regarding the five bureaus," and for a section of the operational review that concerns the patrol division. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You contend that the specific detail sheets for the patrol division are excepted from disclosure under section 552.108(b)(1) of the Government Code, which excepts from disclosure "[a]n 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 . . . if . . . release of the internal record or notation would interfere with law

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.

enforcement or prosecution.” This office has concluded that section 552.108(b)(1) excepts from public disclosure information relating to the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding a police department’s use of force policy excepted under section 552.108), 508 (1988) (release of dates of prison transfer could impair security), 413 (1984) (sketch showing security measures for execution excepted under 552.108). However, policies and techniques that are generally known may not be withheld under section 552.108(b)(1). *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known).

You state that the detail sheets at issue reveal the numbers and locations of department patrol officers in the field within a given work shift. You contend that, if disclosed, this information could be used to identify potential weaknesses in the department. Thus, you contend that release of the detail sheets would interfere with the patrol division’s effective performance of law enforcement duties in the field. You also assert that a pager number used for law enforcement purposes, which you have marked in the submitted documents, is excepted under section 552.108(b)(1). In Open Records Decision No. 506 (1988), this office determined that the statutory predecessor to section 552.108(b) excepted from disclosure “cellular mobile phone numbers assigned to [governmental body] officials and employees with specific law enforcement responsibilities.” You state that the pager number at issue is used by a department officer to carry out law enforcement responsibilities and you assert that the release of the number would interfere with law enforcement and the officer’s performance of his duties. Based on your representations and our review, we agree that release of the detail sheets and pager number at issue would interfere with law enforcement. We therefore agree the department may withhold this information pursuant to section 552.108(b)(1) of the Government Code.

Next, you contend that a portion of the information in the submitted documents is confidential by law. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information made confidential by other statutes. You contend that the originating address and telephone number of a 9-1-1 caller contained in the remaining documents is excepted under 552.101 in conjunction with section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772, and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). You indicate that the City of Dallas is part of an

emergency communication district that was established under section 772.318.² Thus, based on your representations and our review, we determine that the address and telephone number you have marked in the remaining documents are excepted from public disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.

You also contend that a portion of the information at issue relating to officer assignments is protected by common-law privacy and excepted from disclosure under section 552.101 of the Government Code. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication 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). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has also found that certain medical information, and information indicating disabilities or specific illnesses, is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we agree that a portion of the information in the submitted documents is protected by privacy. We have marked the information that the department must withhold pursuant to section 552.101 in conjunction with common-law privacy.³

Finally, you contend that a portion of the submitted information is excepted under section 552.130 of the Government Code. Section 552.130 excepts information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. We have marked the Texas motor vehicle registration information that the department must withhold under section 552.130 of the Government Code.

In summary, the department may withhold the detail sheets and officer pager number contained in the submitted documents pursuant to section 552.108(b)(1) of the Government Code. The originating address and telephone number of a 9-1-1 caller are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. We have marked information that must be withheld pursuant to section 552.101 in conjunction with common-law privacy, and we have

² Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

³ Based on this finding, we need not reach your claim under section 552.117 of the Government Code.

marked information that must be withheld pursuant to section 552.130 of the Government Code. The remainder of the submitted information must be released to the requestors.

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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 199987

Enc: Submitted documents

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