



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 18, 2004

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

OR2004-9816

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# 213205.

The Dallas Police Department (the "department") received a request for internal affairs file 04-024. The requestor states that he is not requesting "any material that the courts have previously deemed private, including the officer's Social Security information, health information, family information and home address." The submitted documents indicate that some responsive information has been released. You claim, however, that the remaining information is 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.<sup>1</sup>

First, you contend that an ST-3 accident report form in the submitted documents is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code. Section 552.101 excepts from disclosure

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<sup>1</sup> 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.

“information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information made confidential by other statutes. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), an accident report completed pursuant to chapter 550 of the Transportation Code is privileged and confidential. *See* Transp. Code § 550.064 (Texas Peace Officer’s Accident Report form). Section 550.065(c)(4) provides for the 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. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental body is required to release a copy of an accident report to a person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* In this instance, you advise that the requestor has not provided the required two out of three pieces of information. Thus, we determine that the department must withhold the ST-3 accident report in the submitted documents pursuant to section 550.065(b) of the Transportation Code.

You also contend that portions of the submitted internal affairs file are excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain 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(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

We note that section 552.108 generally is not applicable to an internal administrative investigation involving law enforcement officers that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution). In this case, however, you state that the information you seek to withhold under section 552.108 relates to a pending homicide investigation. Based on your representations and our review, we find that release of this portion of the submitted information would interfere with law enforcement. Accordingly, we determine the department may withhold this information, which we have marked, under section 552.108(a)(1) of the Government Code.<sup>2</sup>

You have marked a portion of the remaining submitted information that you contend is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts “information considered to be confidential

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<sup>2</sup> Based on this finding, we do not reach your claim under section 552.136 of the Government Code for a portion of this information.

by law, either constitutional, statutory, or by judicial decision.” Common-law privacy 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: an individual’s criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *U. S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review, we agree that the information you have marked is protected by common-law privacy and must be withheld pursuant to section 552.101.

You also indicate that a social security number in the remaining information is excepted under section 552.101. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Finally, you have marked portions of the remaining information that you contend are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 of the Government Code provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. We agree that the department must withhold the marked Texas driver's license number and motor vehicle registration information pursuant to section 552.130 of the Government Code.

In summary, the submitted ST-3 accident report form must be withheld pursuant to section 550.065(b) of the Transportation Code. We have marked information that the department may withhold pursuant to section 552.108(a)(1) of the Government Code. We have also marked information that must be withheld pursuant to section 552.101 of the Government Code in conjunction with common-law privacy, and pursuant to section 552.130 of the Government Code. A social security number may be excepted under section 552.101 in conjunction with federal law. The remainder of the information at issue must be released to the requestor.

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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 213205

Enc: Submitted documents

c: Mr. Michael Grabell  
The Dallas Morning News  
P.O. Box 655237  
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(w/o enclosures)