



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 28, 2005

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

OR2005-08780

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 233096.

The Dallas Police Department (the "department") received a request for information pertaining to a named officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, 552.1175, 552.127, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

You assert that some of the submitted information is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime." A governmental body claiming section 552.108 must

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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.

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), 552.301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information you have marked under section 552.108 relates to pending criminal investigations. Based on this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e., 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. Basic information includes the identification and description of the complainant. Open Records Decision No. 127 (1976). However, information tending to identify a sexual assault victim is private and must be withheld pursuant to section 552.101 of the Government Code. See Gov't Code § 552.101 (excepts information made confidential by judicial decision and encompasses common law privacy); *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). The identifying information that you have marked in report # 0300420-N must not be released as basic information. The remaining basic information in the offense reports you have marked under section 55.108 must be released to the requestor, but the department may withhold the remaining information in these documents under section 552.108.

Section 552.101 also encompasses information protected by other statutes. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. We understand you to assert the department is within an emergency communication district that is subject to section 772.318. Therefore, the originating telephone number and address of a 9-1-1 caller in the submitted information, which you have marked, are confidential under section 772.318 of the Health and Safety Code, and the department must withhold this information under section 552.101 of the Government Code.

Section 552.101 also encompasses section 261.201 of the Family Code. Section 261.201(a) provides as follows:

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, 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). Offense report # 0300420-N contains files, reports, records, communications, or working papers used or developed in an investigation under chapter 261; therefore, this information is within the scope of section 261.201. You do not indicate that the department has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Based on this assumption, we conclude that the submitted information from report # 0300420-N, which we have marked, is confidential pursuant to section 261.201 of the Family Code, and the department must withhold it under section 552.101 of the Government Code.<sup>2</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, you have not demonstrated that report # 327825N pertains to alleged or suspected abuse or neglect of a child. Thus, after review of your arguments, we find you have failed to establish that this report consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261; therefore, this information is not confidential under section 261.201, and the department may not withhold it under section 552.101 on that ground. *See* Gov't Code § 552.301(e)(1) (requiring the governmental body to explain the applicability of the raised exception).

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007(c) reads as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;

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<sup>2</sup>As we are able to resolve this under section 261.201, we do not address your remaining argument for exception of information in report # 0300420-N.

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Service report #0424730-M involves a runaway, which is conduct falling within the scope of section 58.007. *See id.* § 51.03(b). Thus, this report is confidential under section 58.007(c), and the department must withhold it under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common law privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Texas 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. *Id.* at 683. We agree that the information you have marked in service report # 0467193-M is confidential under common law privacy, and the department must withhold it under section 552.101.

You assert that some of the submitted information is excepted under section 552.117 of the Government Code. Section 552.117(a)(2) excepts the home addresses and telephone numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024. Gov't Code § 552.117(a)(2); *see* Open Records Decision No. 622 (1994). We agree that the department must withhold the information you have marked under section 552.117(a)(2).

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that a motor vehicle operator's, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas motor vehicle record information you have marked, as well as the information we have marked, under section 552.130.

Finally, you assert that employee numbers in the remaining information are excepted under section 552.136 of the Government Code. Section 552.136(b) states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is

confidential.” You inform us that “an employee’s identification number is the same number used for the city credit union bank accounts.” Based on this representation, we agree that the department must withhold the account numbers we have marked, as well as an account number we have marked, under section 552.136.

To conclude, with the exception of the basic front-page offense and arrest information, the department may withhold the information you have marked under section 552.108; however, the marked identifying information of a sexual-assault victim must not be released as basic information. The department must withhold the following: (1) pursuant to section 552.101 of the Government Code, the marked information that is confidential under chapter 772 of the Health and Safety Code, section 261.201 of the Family Code, section 58.007 of the Family Code, and common law privacy; (2) the information marked under section 552.117; (3) the marked Texas motor vehicle record information under section 552.130; and (4) the marked account numbers under section 552.136. The department must release the remaining submitted information.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 233096

Enc. Submitted documents

c: Ms. Judi White  
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