ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2005

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P. O. Box 850137
Mesquite, Texas 75185-0137

OR2005-09098

Dear Ms. Graham:

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# 233689.

The Mesquite Police Department (the "department") received a request for twenty four specific police reports. You state that you will release some of the requested information, but claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that the reports in Exhibit 2 are confidential under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides in pertinent part as follows:

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

> (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). Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. You state that the reports in Exhibit #2 consist of law enforcement records pertaining to juveniles maintained by the department. Upon review, we find that report number 04070507 involves juvenile suspects engaged in delinquent conduct that occurred after September 1, 1997. Accordingly, the department must withhold report 04070507 from disclosure under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, report number 04111492 does not involve a juvenile. *See* Family Code § 51.02(2)(A) (defining "child" as person who is ten years of age or older and under seventeen years of age). Additionally, you have failed to explain how report number 04098632 pertains to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision. *See* Fam. Code § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of Fam. Code § 58.007); *see also* Gov't Code § 552.301(e)(1) (requiring the governmental body to explain the applicability of the raised exception). Accordingly, report numbers 04098632 and 04111492 are not confidential under section 58.007 of the Family Code.

The department also claims that Exhibit 3 is excepted under section 552.108. Section 552.108(a) 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." Gov't Code § 552.108(a)(1). 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), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information pertains to a pending criminal prosecution. Based upon this representation, we determine that release of Exhibit 3 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, 531

S.W.2d 177. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note that basic information includes a detailed description of the offense. *See Houston Chronicle*, 531 S.W.2d at 186-187. Thus, with the exception of the basic front page offense and arrest information, you may withhold Exhibit 3 from disclosure based on section 552.108(a)(1).[1] We note that you have the discretion to release all or part of Exhibit 3 that is not otherwise confidential by law. Gov't Code § 552.007.

Exhibit 4 contains ST-3 accident report forms completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. 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 ("DPS") 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 the present request, the requestor has not provided the required information. Accordingly, the department must withhold the submitted ST-3 accident report forms in Exhibit 4 under section 552.101 pursuant to section 550.065(c) of the Transportation Code.

You claim that Exhibits 4 and 5 contain information that is confidential under section 772.118 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts and section 772.118 applies only to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). Section 772.118 makes confidential the originating telephone numbers and addresses of 9-1-1 callers furnished by a 9-1-1 service supplier. *See id.* at 2. You represent that the City of Mesquite is part of an emergency communication district that was established under section 772.118. As such, the department must withhold the information you have marked in Exhibits 4 and 5 pursuant to section 772.118.[2]

You also claim that Exhibits 4 and 5 contain information subject to common law privacy. Section 552.101 also encompasses the common law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which

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[1]Since you may withhold Exhibit 3 under section 552.108, we need not address your section 552.103 claim except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

[2]Because we reach this conclusion, we do not address your argument that this information is also confidential under section 771.061(a) of the Health and Safety Code.

would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. 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, 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, and identities of victims of sexual abuse. Upon review, we find that the personal financial information which you have marked in Exhibits 4 and 5 is protected by common law privacy and must be withheld under section 552.101 on that basis. However, you have failed to explain how the other information that you have marked in Exhibit 4 is protected by common law privacy. Therefore, this information must be released.

Exhibits 2, 4, and 5 also contain Texas motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle record information we have marked in addition to the information you have marked.

We note that Exhibit 5 contains a debit card number subject to section 552.136 of the Government Code. Section 552.136 provides 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." Gov't Code § 552.136. As such, the debit card number, which we have marked, must be withheld pursuant to section 552.136 of the Government Code.

Finally, Exhibits 2 and 5 contain social security numbers. Section 552.147 of the Government Code[3] provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the department must withhold the social security numbers you have marked under section 552.147.[4]

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[3]Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

[4]We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary, the department must withhold report 04070507 in Exhibit 2 from disclosure under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of basic front page offense and arrest information, you may withhold Exhibit 3 from disclosure based on section 552.108(a)(1). The department must withhold the submitted ST-3 accident report forms in Exhibit 4 under section 552.101 pursuant to section 550.065(c) of the Transportation Code. The department must withhold the information you have marked in Exhibits 4 and 5 pursuant to section 772.118. The personal financial information which you have marked in Exhibits 4 and 5 is protected by common law privacy and must be withheld under section 552.101 on that basis. The department must withhold the Texas motor vehicle record information in Exhibits 2, 4 and 5 that we have marked in addition to the information you have marked. The debit card number in Exhibit 5, which we have marked, must be withheld pursuant to section 552.136 of the Government Code. The department must withhold the social security numbers you have marked in Exhibits 2 and 5 under section 552.147. The remaining information 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 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).

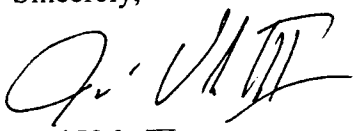
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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,



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JV/krl

Ref: ID# 233689

Enc. Submitted documents

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(w/o enclosures)