



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 13, 2005

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
1400 S. Lamar, Suite 300A
Dallas, Texas 75215-1801

OR2005-11168

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# 237806.

The Dallas Police Department (the "department") received a request for a specific internal affairs investigation. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that the requestor, in his request for information, asks the department to exclude the officer's social security number, health and family information, and home address. Thus, this information, which we have marked, is not responsive to the present request. Accordingly, we do not address your arguments for this information and it need not be released.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *See* Gov't Code § 552.101. Section 552.101 encompasses section 58.007 of the Family Code. Juvenile law enforcement

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.

records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads 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:

- (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.

The records at issue pertain to an internal affairs investigation of the department. As such, they are not juvenile law enforcement records and may not be withheld under section 552.101 in conjunction with section 58.007.

Section 552.101 also encompasses the doctrine of common law privacy. 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 Open Records Decision No. 393 (1983), this office concluded that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common law privacy. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982). Furthermore, in *Morales v. Ellen*, the court held that the identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information that the public did not have a legitimate interest in. 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). Thus, the names of alleged victims of sexual assault and sexual harassment you have marked must be withheld under section 522.101 in conjunction with common law privacy.

You claim that the officers' cellular telephone and pager numbers you have marked are excepted from disclosure pursuant to section 552.108 of the Government Code.

Section 552.108(b)(1) excepts from disclosure an internal record of a law enforcement agency 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 enforcement or prosecution.” Generally, a governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the submitted officers’ cellular telephone and pager numbers are used in the field to carry out their law enforcement responsibilities. You further claim that release of this information would interfere with law enforcement because it would interfere with the ability of the officers to perform their job duties, as these lines of communications need to be available for the officer’s immediate needs. Having reviewed your arguments and the submitted information, we agree that release of the officers’ cellular telephone and pager numbers would interfere with law enforcement or crime prevention. *See* Open Records Decision No. 506 at 2 (1988) (statutory predecessor to section 552.108(b) excepted from disclosure the cellular mobile phone numbers assigned to Harris County officials and employees with specific law enforcement responsibilities). Accordingly, the department may withhold the cellular telephone and pager numbers you have marked under section 552.108(b)(1) of the Government Code.

Finally, you argue that section 552.136 is applicable to an employee number. This exception provides as follows:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. You state that a police officer’s employee number is also used as the officer’s city credit account number. Based on your representation, we agree that the department must withhold the police officer’s employee number you have marked under section 552.136 of the Government Code.

In summary, the names of alleged victims of sexual assault and sexual harassment you have marked must be withheld under section 552.101 in conjunction with common law privacy. The department may withhold the cellular telephone and pager numbers under section 552.108(b)(1) of the Government Code. The department must withhold the police officer's employee number under section 552.136 of the Government Code. The remaining responsive 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, 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,

A handwritten signature in black ink, appearing to read 'José Vela III', with a stylized flourish extending to the right.

José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 237806

Enc. Submitted documents

c: Michael Grabell
The Dallas Morning News
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(w/o enclosures)