



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 21, 2006

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

OR2006-09548

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# 256982.

The Dallas Police Department (the "department") received three requests for copies of informant payment receipts relating to: (1) four specified informant numbers from 2001 to 2005, (2) one specified informant number from 2001 to 2004, and (3) all receipts from 2000 to the present. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

[T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

.....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted documents contain information relating to the expenditure of public funds by the department. This information is subject to section 552.022(a)(3) and must be released unless expressly made confidential under other law. Section 552.108 of the Government Code is a discretionary exception to public disclosure that protects the governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). As such, section 552.108 is not other law that makes information confidential for the purposes of section 552.022(a)(3). Therefore, the department may not withhold any of the submitted information under section 552.108. However, we will address the applicability of section 552.101 of the Government Code, which is other law for purposes of section 552.022.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses 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). Information also may be withheld under section 552.101 in conjunction with common-law privacy upon a showing of certain "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution" *Id.* You assert that the involved officers and informants would face an imminent threat of physical danger if certain information in the submitted documents is released to the public. Based upon your arguments and our review of the submitted documents, we conclude that the information you have marked is confidential under section 552.101 in conjunction with common-law privacy and must be withheld from the requestors. *See* Open Records Decision No. 169 (1977).

Section 552.101 also encompasses Chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the

disclosure of the submitted fingerprint information. The submitted fingerprints are confidential under section 560.003. However, one of the requestors represents an individual whose fingerprints are at issue. This requestor has a right of access to his client's fingerprint information. See *id.* § 560.002(1); Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Accordingly, the department must release the fingerprints of the requestor's client to this requestor. The department must withhold the remaining fingerprint information from the remaining requestor under section 552.101 in conjunction with section 560.003 of the Government Code.

In summary, the department must withhold the information you have marked under section 552.101 in conjunction with common-law privacy. The department must release the fingerprints of the requestor's client to this requestor. The department must withhold the remaining fingerprint information from the remaining requestor under section 552.101 in conjunction with section 560.003 of the Government Code. The remaining 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).

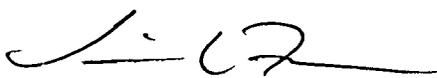
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/krl

Ref: ID# 256982

Enc. Submitted documents

c: Mr. Mark Smith
WFAA Producer
606 Young Street
Dallas, Texas 75202-4870
(w/o enclosures)

Mr. Raul H. Loya
Loya & Associates, P.C.
10830 North Central Expressway, Suite 200
Dallas, Texas 75231
(w/o enclosures)