



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2006

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

OR2006-11655

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# 261275.

The Dallas Police Department (the "department") received a request for the complete investigation concerning a named department officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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

¹ 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.

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. In this case, you state that the submitted call report contains the originating phone number and address of a 9-1-1 caller. We understand you to assert that the emergency communication district here is subject to section 772.318. Therefore, to the extent the originating telephone number and address of the 9-1-1 caller you have marked was supplied by a 9-1-1 service supplier, this information is confidential under section 772.318 of the Health and Safety Code and must be withheld from disclosure under section 552.101 of the Government Code; however, if this information was not provided by a 9-1-1 service supplier to the emergency communication district, this information may not be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 also encompasses the doctrine of common law privacy, which 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). To demonstrate the applicability of common law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Therefore, the department must withhold the information you have marked under section 552.101 in conjunction with common law privacy.

Next, you claim that department officers' mobile telephone and pager numbers are protected from public disclosure under section 552.108 of the Government Code. Section 552.108(b)(1) excepts 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." Gov't Code § 552.108(a)(1). You claim that release of an officer's mobile telephone or pager number would interfere with law enforcement as "it would interfere with the ability of [the department's] officers to perform their job duties." Having reviewed your arguments and the submitted information, we agree that release of the mobile 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 submitted mobile telephone and pager numbers, which you have marked, under section 552.108(b)(1) of the Government Code.

Next, we address your claim that some of the submitted information is subject to section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). We note that section 552.117 only applies to records that the governmental body holds in its capacity as an employer. *See id.* § 552.117 (providing that employees of governmental entities may protect certain personal information in the hands of their employer). In this instance, the information you have marked does not belong to an employee of the department. Furthermore, the marked information is contained in a law enforcement record. Thus, we find that you have failed to demonstrate the applicability of section 552.117 to this information. Accordingly, the department may not withhold any of the submitted information under section 552.117.

You also claim the Texas driver's license information you have marked is excepted from disclosure by section 552.130 of the Government Code. This section 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[.]" *Id.* § 552.130. Accordingly, the department must withhold the marked driver's license information under section 552.130.

Finally, you assert that some of the remaining information is 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." *Id.* § 552.136. 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 identification numbers you have marked under section 552.136.

In summary, the department must withhold under section 552.101 of the Government Code (1) the originating telephone number of the 9-1-1 caller you have marked under section 772.318 of the Health and Safety Code if it was supplied by a 9-1-1 service supplier, and (2) the information you have marked under section 552.101 in conjunction with common law privacy. The department may withhold the information you have marked under section 552.108(b)(1) of the Government Code. The department must also withhold the information marked under sections 552.130 and 552.136 of the Government Code. The department must release the remaining information 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).

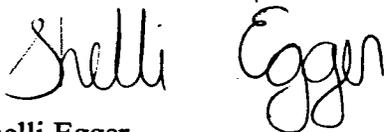
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 261275

Enc. Submitted documents

c: Ms. Joanne Castaneda
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(w/o enclosures)