



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 19, 2008

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

OR2008-03657

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# 305091.

The Dallas Police Department (the "department") received a request for information related to a named police officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted documents include a CRB-3 accident report form that has been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. Transp. Code § 550.065(b). 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. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute.<sup>1</sup> *Id.* In the present request, the requestor has not provided the required information. Accordingly,

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<sup>1</sup>Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

the city must withhold the accident report form, which you have marked, from public disclosure pursuant to section 550.065(b).

We first address your claim under section 552.108 of the Government Code, as it is potentially the broadest. Section 552.108 of the Government Code 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[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information that it seeks to withhold under this exception. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 51 S.W.2d 706 (Tex. 1977). The department seeks to withhold information related to a pending criminal investigation conducted by the department’s Public Integrity Unit, as well as an internal affairs investigation conducted by the department’s Internal Affairs Division. Section 552.108 is generally not applicable to the records of an internal investigation that is purely administrative in nature. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 350 at 3-4 (1982). In this instance, however, you state that the information at issue pertains to an open and active criminal investigation. You also state that the Dallas County District Attorney’s Office has requested that this information be withheld because release would interfere with the pending investigation. Based on your representations, we find that the release of the information at issue 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). Accordingly, the department may withhold the information you have marked under section 552.108(a)(1).<sup>2</sup>

Next, you assert that some of the remaining information is subject to sections 552.101, 552.117, 552.130, and 552.136 of the Government Code. Section 552.101 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. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See Fam. Code* § 51.02(2). 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,

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure for the information at issue.

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.

*Id.* § 58.007(c). You state, and we agree, that some of the remaining information relates to juvenile law enforcement records that pertain to conduct that occurred after September 1, 1997. Because none of the exceptions in section 58.007 apply, we determine that the information at issue, which you have marked, is confidential under section 58.007(c) and must be withheld pursuant to section 552.101.

Section 552.101 also encompasses information that is made confidential by statute. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See* Gov't Code § 411.083. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we determine that some of the remaining information constitutes CHRI generated by TCIC and NCIC. We have marked the information the department must withhold pursuant to section 552.101 in conjunction with chapter 411 of the Government Code. However, none of the remaining information constitutes CHRI generated by the NCIC or TCIC. Thus, chapter 411 is not applicable to this information, and it may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses section 1703.306 of the Occupations Code, which governs access to information obtained during the course of a polygraph examination. Section 1703.306 provides in relevant part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306. Accordingly, the department must withhold the information you have marked under section 552.101 in conjunction with section 703.306(a)(1) of the Occupations 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 (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. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Therefore, the department must withhold the information you have marked, as well as the information we have marked, under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) excepts from disclosure “information that relates to the home address, home telephone number, or social security number” of a peace officer, or information that reveals whether the peace officer has family members, regardless of whether the officer complies with section 552.024 or section 552.1175.<sup>3</sup> Gov’t Code § 552.117(a)(2).

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<sup>3</sup>Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 2.12.

Accordingly, we conclude that the department must withhold the information you have marked, as well as the information we have marked, pursuant to section 552.117(a)(2).

Section 552.136 of the Government Code 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 state that an employee identification number is an access device number. Accordingly, the department must withhold the access device number you have marked pursuant to section 552.136.

In summary, the department must withhold the marked accident report form under section 550.065(b) of the Transportation Code. The department may withhold the information it has marked under section 552.108 of the Government Code. The department must withhold the information it has marked under section 552.101 in conjunction with section 58.007 of the Family Code; the information we have marked under section 552.101 in conjunction with chapter 411 of the Government Code; the information it has marked under section 552.101 in conjunction with section 1703.306(a)(1) of the Occupations Code; and the information it has marked, as well as the information we have marked, under section 552.101 in conjunction with common-law privacy. The department must also withhold the information it has marked, as well as the information we have marked, under section 552.117. Finally, the department must withhold the information it has marked under section 552.136. The remaining 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Loan Hong-Turney  
Assistant Attorney General  
Open Records Division

LH/eeg

Ref: ID# 305091

Enc. Submitted documents

c: Ms. Tanya Eiserer  
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(w/o enclosures)