



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2008

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

OR2008-07646

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# 313238.

The City of Dallas and the Dallas Police Department (collectively the "city") received four requests for information relating to an incident involving U.S. Senator Kay Bailey Hutchison. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.¹

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 at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the submitted information is related to a pending prosecution. You have marked the information that the city seeks to withhold under section 552.108. You state that

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

the Dallas County District Attorney's office objects to disclosure of the marked information because release of the information could jeopardize the prosecution of the case. Based on your representations, we conclude that the city may withhold the marked information under section 552.108(a)(1).² 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).

You also raise 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 exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In Open Records Decision No. 169 (1977), this office concluded that under certain "special circumstances," common-law privacy will protect information that ordinarily would be subject to disclosure. *Id.* at 6-7. Such "special circumstances" encompass a very narrow set of situations. *Id.* at 6. They do not include a desire for privacy or "a generalized and speculative fear of harassment or retribution." *Id.* On the other hand, "special circumstances" do include situations in which release of the information would likely cause someone to face "an imminent threat of physical danger." *Id.*

We determine whether a request for information involves such "special circumstances" on a case-by-case basis. *Id.* at 7. You seek to withhold Senator Hutchison's home address and telephone number on this basis. We note that an individual's home address and telephone number are generally not private information under section 552.101. See Open Records Decision Nos. 554 at 3 (1990) (disclosure of a person's home address and telephone number is not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers do not qualify as "intimate aspects of human affairs"); *but see* ORD 169 at 7 (three El Paso police officers and two civilian employees demonstrated special circumstances sufficient to warrant withholding their home addresses). In this instance, you inform us that Senator Hutchison already has been the target of a stalking incident at her residence in Dallas. Under these circumstances, we conclude that the city must withhold the submitted information that is related to Senator Hutchison's home address under section 552.101 in conjunction with common-law privacy. We have marked that information. Although you seek to withhold other information on this basis, we find that the remaining information that you have marked does not reveal Senator Hutchison's home address or home telephone number. Therefore, the city may not withhold any of the remaining information on privacy grounds under section 552.101.

²As we are able to make this determination, we need not address your other arguments against disclosure of the marked information.

In summary: (1) the city may withhold the information relating to the pending prosecution that you have marked under section 552.108(a)(1) of the Government Code; and (2) the city must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The rest of the submitted 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).

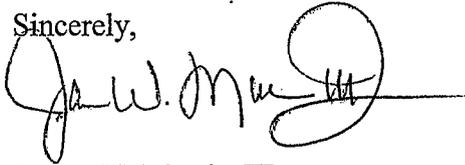
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 313238

Enc: Submitted documents

c: Mr. Manu Raju
The Hill
1625 K Street Northwest Suite 900
Washington, DC 20006
(w/o enclosures)

Mr. Gerardo Lopez
KTVT-TV CBS 11 News
10111 North Central Expressway
Dallas, Texas 75231
(w/o enclosures)

Mr. Austin Kilgore
People Newspapers
4311 Oak Lawn Avenue Suite 350
Dallas, Texas 75219
(w/o enclosures)

Mr. Paul Weber
The Associated Press
4851 LBJ Freeway Suite 300
Dallas, Texas 75244
(w/o enclosures)