



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 24, 2008

Ms. Sylvia McClellan  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2008-08548

Dear Ms. McClellan:

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# 313586.

The Dallas Police Department (the "department") received a request for all incident reports pertaining to a specified location from 2006 through 2008. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted sample of information.<sup>1</sup>

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A);

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<sup>1</sup>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.

see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that portions of the submitted information relate to pending criminal investigations and prosecutions. Based upon this representation, we conclude that you have established that the release of this information 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). Thus, section 552.108(a)(1) is applicable to the information you have marked.

However, section 552.108 does not except basic information about an arrested person, an arrest or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle* and includes, among other things, a detailed description of the offense and the identification and description of the complainant. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, you may withhold the information you have marked under section 552.108(a)(1) of the Government Code.<sup>2</sup> We note that a portion of the basic information in incident report numbers 0548458-T and 0082059-V is excepted from disclosure under section 552.101 of the Government Code. Additionally, portions of the remaining information are also subject to section 552.101 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 common-law privacy, which protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Indust. 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 the test must be satisfied. *Id.* at 681-82. Information that either identifies or tends to identify a victim of sexual assault must be withheld under common-law privacy. See Open Records Decisions Nos. 393 (1983), 339 (1982). We have marked basic information that identifies the sexual assault victims in incident report numbers 0548458-T and 0082059-V that the department must withhold under common-law privacy.

Additionally, the types 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. Lastly, this office has found that a compilation of an individual's criminal history record information is highly embarrassing information, the publication of which would be highly

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

objectionable to a reasonable person. *Cf. U.S. 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. Upon review, we find the information you have marked and the additional information we have marked in the remaining documents constitute highly intimate or embarrassing information in which there is not a legitimate public interest. Accordingly, the department must withhold this information under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses information made confidential by statute such as section 58.007 of the Family Code. Juvenile law enforcement 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.

Fam. Code. § 58.007(c). Upon review, we find that some of the submitted reports involve juvenile conduct that occurred after September 1, 1997. *See id.* §§ 58.007, 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007). It does not appear that any of the exceptions in section 58.007(c) of the Family Code apply. Thus, we agree that the incident reports you have marked are confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses section 261.201 of the Family Code. Section 261.201(a) provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You indicate that a portion of the submitted information pertains to an investigation of alleged child abuse or neglect. Upon review, we agree this information was used or developed in an investigation of alleged or suspected child abuse. We therefore determine that section 261.201 is applicable to the information. Accordingly, the department must withhold the report it marked under section 552.101 in conjunction with section 261.201 of the Family Code.

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a). We agree that the department must withhold the Texas motor vehicle record information you have marked and the additional information we have marked under section 552.130.

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." Gov't Code § 552.136. Accordingly, the department must withhold the account number you have marked in incident report number 0071500-V under section 552.136 of the Government Code.

Finally, you assert that portions of the remaining information are excepted under section 552.147 of the Government Code, which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. We agree that the department may withhold the social security numbers you have marked under section 552.147 of the Government Code.<sup>3</sup>

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<sup>3</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary, with the exception of basic information, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the following under section 552.101 of the Government Code: 1) the information you have marked and the additional information we have marked under common-law privacy; 2) the information you have marked under section 58.007 of the Family Code; and 3) the report the department marked under section 261.201 of the Family Code. The department must also withhold the information you have marked under sections 552.130 and 552.136 of the Government Code. The department may withhold the social security numbers you have marked under section 552.147 of the Government Code. The remaining information must be released 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 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). If the governmental body does not file suit over 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,

A handwritten signature in black ink that reads "Henisha D. Anderson". The signature is written in a cursive, flowing style.

Henisha D. Anderson  
Assistant Attorney General  
Open Records Division

HDA/mcf

Ref: ID# 313586

Enc. Submitted documents

c: Mr. Jason Graham  
8750 North Central Expressway, #1600  
Dallas, Texas 75231  
(w/o enclosures)