



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2008

Ms. J. Middlebrooks
Assistant City Attorney
Dallas Police Department
1400 South Lamar
Dallas, Texas 75215

OR2008-14060

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# 324620.

The Dallas Police Department (the "department") received a request for the internal affairs records pertaining to a named officer. You claim that portions of the submitted information are 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.

You claim that portions of the submitted internal affairs documents are subject to section 552.108 of the Government Code. Section 552.108(a)(1) 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). Section 552.108 is generally not applicable to records of an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (addressing statutory predecessor to section 552.108). You state that the Dallas County District Attorney's Office is currently prosecuting the named officer for insurance fraud. You further state that the administrative documents at issue here contain information that is at the center of the criminal investigation and that the release of this information, which you have identified, would interfere with this pending prosecution. Based on your representations and

our review, we agree 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). We therefore conclude that the department may withhold the submitted recording and the information you have marked in the records under section 552.108(a)(1) of the Government Code.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 the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *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. *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. Accordingly, we have marked the criminal history information that must be withheld under section 552.101 in conjunction with common-law privacy.

The remaining information contains the home address and home telephone number of the named peace officer. Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. The department must withhold the information you have marked under section 552.117 of the Government Code.

You assert that some of the remaining information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure “information [that] relates to . . . a motor vehicle title or registration issued by an agency of this state.” *Id.* § 552.130(a)(2). Accordingly, the department must withhold the Texas motor

¹As our ruling is dispositive, we need not address your other arguments against the disclosure of this information.

vehicle record information you have marked pursuant to section 552.130 of the Government Code.

Finally, you state that section 552.136 of the Government Code excepts an employee number from public disclosure. Section 552.136 provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value;
or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. The department informs us that a police officer's employee number is also used as the officer's city bank account number. Based upon this representation, we agree the department must withhold the marked employee number under section 552.136 of the Government Code.

In summary, the department may withhold the submitted recording and the information you have marked in the records under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The department must withhold the officer's home address and home telephone number under section 552.117(a)(2) of the Government Code. The department must withhold the Texas motor vehicle information under section 552.130 of the Government Code. The department must withhold the employee number under section 552.136 of the Government Code. 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). 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,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 324620

Enc. Submitted documents

c: Ms. Tanya Eiserer
Dallas, Morning News
P. O. Box 655237
Dallas, Texas 75265
(w/o enclosures)