ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2008

Mr. J. Middlebrooks
Assistant City Attorney
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2008-14240

Dear Mr. 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#325389.

The Dallas Police Department (the "department") received a request for any e-mails referencing three names sent to or from specific department employees during January 1, 2008 through August 5, 2008. You claim that some of the requested information is excepted from disclosure under sections 552.108 and 552.137 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted representative sample of information.[2]

You contend that department officers' cellular telephone numbers are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(b)(1) excepts from required public disclosure an internal record of a law enforcement agency 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(b)(1). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); *City*

[1]Although you raise section 552.101 of the Government Code, you provide no supporting arguments explaining why this exception is applicable to the information at issue. Thus, we have no basis for finding the information at issue confidential under section 552.101. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

[2]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.

of Fort Worth v. Cornyn, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). In Open Records Decision No. 506 (1988), this office determined that the statutory predecessor to section 552.108(b) excepted from disclosure "cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities." ORD 506 at 2. We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.* You state that the department officers' cellular telephone numbers are used by the officers in the field to carry out their law enforcement responsibilities. You assert that the release of this information would interfere with law enforcement because it would interfere with the ability of the officers to perform their job duties. Based on your representations and our review of the information at issue, we conclude that the department may withhold the cellular telephone numbers you have marked under section 552.108(b)(1) of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not of a type specifically excluded by section 552.137(c) of the Government Code. In addition, you state that the department has not received consent for the release of the e-mail addresses at issue. Therefore, the department must withhold the e-mail addresses you have marked under section 552.137 of the Government Code.

In summary, the department may withhold the marked cellular telephone numbers under section 552.108(b)(1) of the Government Code. The department must withhold the marked e-mail addresses under section 552.137 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,

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/jb

Ref: ID#325389

Enc. Submitted documents

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