ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2008

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

OR2008-14513

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# 325409.

The Dallas Police Department (the "department") received a request for all records pertaining to a specified address between September 13, 1995 and the August 5, 2008. You claim portions of the submitted incident and calls for service reports 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 representative sample of information.[1]

Initially, we note some of the submitted entries on the calls for service reports do not pertain to the address and date range specified in the request. Thus, this information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

[1] 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.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides:

> (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:
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> > (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). We note incident report number 0842191-F was used or developed in an investigation of indecency with a child. *See id.* § 261.001(1)(E) (definition of child abuse includes indecency with a child under Penal Code section 21.11); *see also id.* § 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Based on our review, we find this report is within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, the department must withhold report number 0842191-F under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.[2] *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

> (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:

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[2] As our ruling for this information is dispositive, we need not address your argument for portions of this information.

> (1) if maintained on paper or microfilm, kept separate from adult files and records;
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> (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). 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 id.* § 51.02(2). Incident report numbers 0232511-V and 0103075-V involve fifteen year old individuals suspected of criminal activity. Thus, we find these reports involve juvenile delinquent conduct. *See id.* § 51.03(a) (defining "juvenile delinquent conduct" for the purposes of section 58.007). It does not appear that any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find incident report numbers 0232511-V and 0103075-V are confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.

You claim the submitted CRB-3 and ST-3 officer's accident reports are confidential under chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 552.101 also encompasses section 550.065(b) of the Transportation Code, which states except as provided by subsection (c), accident reports are privileged and confidential. *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the 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 of the items of information specified by the statute. *Id.* In this instance, the requestor has not provided the department with two of the three items of information specified by section 550.065(c)(4). Therefore, the department must withhold the officer's accident reports we have marked pursuant to section 550.065(b) of the Transportation Code. You also claim additional submitted accident reports are confidential under section 550.065(b). We note, however, these additional reports are not the type of report traditionally protected by section 550.065(b). Furthermore, you have not explained how these reports are subject to chapter 550 of the Transportation Code. Therefore, we find the department has failed to demonstrate the applicability of section 550.065(b) to the remaining accident reports, and they may not be withheld on this basis.

Section 552.101 also encompasses Chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Section 772.318 of the Health and Safety Code is applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). This section makes the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You indicate the City of Dallas is part of an emergency communication district established under section 772.318 of the Health and Safety Code. You state the telephone numbers you have marked in the calls for service reports were provided to the department by a 9-1-1 service supplier. Based on your representations, we conclude the department must withhold the marked telephone numbers in the calls for service reports under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 also 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 established. *Id.* at 681-82. 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 Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Furthermore, 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The remaining information contains references to a psychiatric disorder, the identities of alleged victims of sexual assault, and suspects' criminal history. Therefore, the department must withhold the psychiatric information, alleged sexual assault victims' identifying information, and criminal history information we have marked in the remaining information under section 552.101 in conjunction with common-law privacy. You have failed to demonstrate, however, how the remaining information you have marked under

common-law privacy is highly intimate or embarrassing. Thus, this information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As you have claimed no other exceptions for this information, it must be released.

You contend some of the remaining incident reports are excepted under 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 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); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 0725319-T, 0725251-T, 0225152-V, 0201268-V, 0185446-V, 0168881-V, and 0421722-K pertain to pending criminal investigations. Based upon this representation, we conclude the release of these reports 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).

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88. We note basic information described in *Houston Chronicle* does not include information subject to section 552.130 of the Government Code. Thus, with the exception of basic information, the department may withhold incident report numbers 0725319-T, 0725251-T, 0225152-V, 0201268-V, 0185446-V, 0168881-V, and 0421722-K pursuant to section 552.108(a)(1) of the Government Code. We note you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

You claim the remaining information includes information protected by section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Therefore, the department must withhold the Texas motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold report number 0842191-F under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; report numbers 0232511-V and 0103075-V under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; the accident reports we have marked pursuant to section 550.065(b) of the Transportation Code; the marked telephone numbers

under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code; and the psychiatric information, alleged sexual assault victims' identifying information, and criminal history information we have marked under section 552.101 in conjunction with common-law privacy. With the exception of basic information, the department may withhold incident report numbers 0725319-T, 0725251-T, 0225152-V, 0201268-V, 0185446-V, 0168881-V, and 0421722-K pursuant to section 552.108(a)(1) of the Government Code. The department must withhold the marked Texas motor vehicle record information under section 552.130 of the Government Code. The remaining information must be released.[3]

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).

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[3] We note the remaining information contains a social security number. 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.

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,

Leah B. Wingerson

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 325409

Enc. Submitted documents

c: Ms. Gabriela Rosales
5739 Elmrose Terrace
Dallas, Texas 75214
(w/o enclosures)