



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 11, 2009

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

OR2009-01829

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# 334515 (DPD request number 08-8217).

The Dallas Police Department (the "department") received a request for all search warrants, arrest warrants, and affidavits regarding the arrest of a named individual in reference to incident number 333888-V. You claim portions of the submitted search warrants, arrest warrant, and affidavits supporting the warrants are excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

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 have marked information in the submitted documents you state pertains to a pending criminal investigation. Based upon this representation, we conclude 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). Accordingly, the information you have marked may be withheld pursuant to section 552.108(a)(1) of the Government Code.²

You claim portions of the remaining information are confidential under 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 driver's license number you have marked in the remaining information under section 552.130 of the Government Code.

You claim the MySpace account numbers you have marked in the remaining information are protected under section 552.136 of the Government Code. This section 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.” *Id.* § 552.136. You have not explained how the marked MySpace account numbers constitute access device numbers for purposes of section 552.136. Accordingly, this information may not be withheld under section 552.136 of the Government Code. As you have claimed no further exceptions to disclosure for these account numbers, they must be released.

You claim the remaining information includes e-mail addresses that are subject to section 552.137 of the Government Code, which 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). *See id.* § 552.137(a)-(c). The e-mail addresses you have marked in the remaining information are not specifically excluded by section 552.137(c). As such, these e-mail addresses, and the additional address we have marked, must be withheld under section 552.137, unless the owners of the addresses have affirmatively consented to their release. *See id.* § 552.137(b).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication

²As our ruling for this information is dispositive, we need not address your remaining arguments for portions of this information.

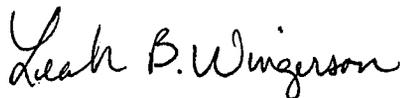
of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. You claim the juvenile victim's identifying information you have marked in the remaining information is protected by common-law privacy. In this instance, we agree this information is highly intimate or embarrassing and not of legitimate public concern. *Cf.* Open Records Decision No. 339 (1982) (sexual assault victim has common-law privacy interest that prevents disclosure of information that would identify the victim). Therefore, the department must withhold the juvenile victim's identifying information you have marked under section 552.101 in conjunction with common-law privacy.

In summary, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the Texas driver's license number you have marked under section 552.130 of the Government Code; the e-mail addresses you have marked, and the additional address we have marked, under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release; and the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/cc

Ref: ID# 334515

Enc. Submitted documents

cc: Requestor
(w/o enclosures)