



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2009

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

OR2009-05674

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# 341282 (DPD ORR ID# 09-0951).

The Dallas Police Department (the "department") received a request for e-mails and "pin messages" pertaining to a named department employee from a specified period of time. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 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 from public disclosure if (1) it is highly intimate or embarrassing facts, the publication of which would be highly objectionable to a person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d

¹We 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.

668, 685 (Tex. 1976). 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. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we agree the information you marked under common-law privacy is both highly intimate or embarrassing and of no legitimate public concern. Thus, the department must withhold the information you marked under section 552.101 in conjunction with common-law privacy.²

Next, you claim that the cellular telephone number of a police officer, which you have marked, is excepted from disclosure under section 552.108. 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 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.” *Id.* 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 assert that the release of the cellular telephone number you marked would interfere with law enforcement. Based on your representations and our review of the information at issue, we conclude that the department may withhold the cellular telephone number you marked under section 552.108(b)(1) of the Government Code.

Next, you claim that some of the remaining information at issue is excepted from public disclosure pursuant to section 552.117 of the Government Code. Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the officer requested confidentiality under

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

section 552.024 or 552.1175 of the Government Code. Gov't Code § 552.117. Accordingly, we agree the department must withhold the information you have marked under section 552.117(a)(2) 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). *See id.* § 552.137(a)-(c). Under section 552.137, a governmental body may disclose the e-mail address of a member of the general public if the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You do not indicate that the individuals at issue have affirmatively consented to the release of any e-mail address. Furthermore, the e-mail addresses at issue do not fall within any section 552.137 exceptions. Thus, the department must withhold the e-mail addresses you have marked, and the additional address we have marked, under section 552.137 of the Government Code.

In summary, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy, and the department may withhold the information you marked under section 552.108(b)(1) of the Government Code. The department must also withhold the information marked under sections 552.117 and 552.137 of the Government Code. The remaining requested information must be released to the requestor.

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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/sdk

Ref: ID# 341282

Enc. Submitted documents

c: Requestor
(w/o enclosures)