



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2009

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

OR2009-06367

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# 342885 (DPD# 09-1411).

The Dallas Police Department (the "department") received a request for two specified internal affairs investigations. You claim 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 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. This section encompasses information protected by other statutes such as section 550.065 of the Transportation Code. The submitted information includes an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. See Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states except as provided by subsection (c), accident reports are

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

privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) 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 pieces of information specified by the statute.² *Id.* In this instance, the requestor has not provided the department with at least two of the three items of information specified by section 550.065(c)(4). Therefore, the department must withhold the submitted accident report we have marked pursuant to section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code. Chapter 772 authorizes the development of local emergency communications districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See Open Records Decision No. 649 (1996)*. You indicate the department is within an emergency communication district that is subject to section 772.318. You claim that the 9-1-1 callers' originating telephone number and address you have marked in the submitted 9-1-1 call sheets are confidential under section 772.318 of the Health and Safety Code. To the extent the telephone number and address you have marked were furnished by a 911 service supplier, we agree the department must withhold this information 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 if it (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. 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find a portion of the submitted information is highly embarrassing information that is not of legitimate public interest. Accordingly, we agree the department must withhold this information, which we have marked, under section 552.101

²Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

in conjunction with common-law privacy. However, we find the remaining information you have marked is not intimate and embarrassing and of no legitimate interest to the public. Thus, it may not be withheld pursuant to section 552.101 in conjunction with common-law privacy.

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). Generally, a governmental body claiming section 552.108(a)(1) 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 a portion of the submitted information pertains to a pending criminal prosecution. You also inform us the Collin County District Attorney’s Office states the release of this information could jeopardize the pending prosecution. Based on your representations and our review, we conclude the release of the information you have marked 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.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Accordingly, we agree the department may withhold the information you have marked under section 552.108(a)(1).

Section 552.117(a)(2) excepts from public disclosure a peace officer’s home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the department must withhold the information you have marked under section 552.117(a)(2) of the Government Code.

Section 552.130 provides that 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. *Id.* § 552.130(a)(1), (2). Therefore, the department must withhold the Texas motor vehicle information you have marked, as well as the information we have marked, under section 552.130.

Section 552.136(b) states “[n]otwithstanding any other provision of [the Act], 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(b). We understand an employee’s identification number is also used as an employee’s credit union bank account number. Thus, the department must withhold the information you have marked under section 552.136 of the Government Code.

In summary, the department must withhold the accident report form under section 552.101 in conjunction with section 550.065 of the Transportation Code. To the extent the telephone number and address you have marked were furnished by a 9-1-1 service supplier, the department must withhold this information under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. The department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The department may withhold the information you have marked under section 552.108(a)(1). The department must withhold the information you have marked under section 552.117(a)(2), the marked Texas motor vehicle information under section 552.130, and the marked access device numbers under section 552.136. 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,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 342885

Enc. Submitted documents

c: Requestor
(w/o enclosures)