ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2009

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

OR2009-06900

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# 346491 (DPD PIR # 09-2599).

The Dallas Police Department (the "department") received a request for 911 calls and/or surveillance video from a specified incident. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.[1]

Section 552.108 of the Government Code provides in part:

> (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

[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.

> (1) 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.2d706 (Tex. 1977). You state that the surveillance video relates to a pending criminal investigation and that release of the information would jeopardize the investigation. Based on this representation, we conclude that 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold the surveillance video under section 552.108(a)(1) of the Government Code.

You also 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 inform us that the cellular telephone number at issue is an "internal mobile telephone . . . number used by [department] officers in the field." You assert that the release of the cellular telephone number at issue would interfere with law enforcement and crime prevention. Based on your representations and our review of the information at issue, we conclude that the department may withhold the officer's cellular telephone number you have marked under section 552.108(b)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Gov't Code § 552.101. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established

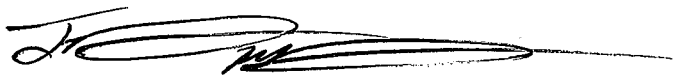
in accordance with chapter 772 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). You state that the department is part of an emergency communication district that was established under section 772.318.[2] Thus, we agree the telephone number you have marked must be withheld from public disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.

In summary, the department may withhold the surveillance video under section 552.108(a)(1) of the Government Code. The department may withhold the officer's cellular telephone number you have marked under section 552.108(b)(1) of the Government Code. The department must withhold the 911 caller's telephone number you have marked pursuant to section 552.101 in conjunction with section 772.318 of the Health and Safety Code. 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,



Travis Tidmore
Assistant Attorney General
Open Records Division

TT/sdk

Ref: ID# 346491

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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[2]Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.