



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2009

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

OR2009-14967

Dear Mr. 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# 359043 (DPD Public Information Request No. 09-6209).

The Dallas Police Department (the "department") received a request for information related to the internal affairs investigation of a named officer involved in a death in custody. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted information consists of a completed investigation subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]" unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). Although you seek to withhold this information under section 552.103 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 439, 475-76 (Tex. App.—Dallas, 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes

information confidential for the purposes of section 552.022. Therefore, the department may not withhold this information under section 552.103 of the Government Code. Because sections 552.101, 552.117, 552.130, and 552.136 are "other law" for purposes of section 552.022, we will consider the applicability of these exceptions.

Next, you raise section 552.101 of the Government Code for a portion of the submitted information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section incorporates 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 satisfied. *Id.* at 681-82. 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. In addition, this office has found that medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. 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 that a portion of the submitted information, which we have marked, is highly intimate or embarrassing and not of legitimate public interest. Thus, this marked information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

You also raise section 552.117 of the Government Code for a portion of the remaining information. Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, social security number, and the 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 section 552.024 or section 552.1175 of the Government Code. See Gov't Code § 552.117(a)(2). Accordingly, the department must withhold the information you have marked under section 552.117.

Next, you raise section 552.130 of the Government Code for a portion of the remaining information. 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. Gov't Code § 552.130(a)(1), (2). Accordingly, the Texas motor vehicle record information you have marked, as well as the additional information we have marked, must be withheld under section 552.130 of the Government Code.

Finally, you raise section 552.136 of the Government Code for portions of the remaining information. Section 552.136(b) states “[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.” Gov’t Code § 552.136. Accordingly, the department must withhold the account numbers you have marked under section 552.136 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information you have marked under section 552.117 of the Government Code. The department must withhold the information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code, and the account numbers you have marked under section 552.136 of the Government 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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eeg

Ref: ID# 359043

Enc. Submitted documents

c: Requestor
(w/o enclosures)