



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2010

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

OR2010-08108

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# 382109 (DPD Request # 10-2805).

The City of Dallas (the "city") received a request for eight specified incident reports and for the book-in photographs or mug shots for the suspects arrested in those reports. You claim the marked portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note you submitted the responsive incident reports, but not the requested book-in photographs or mug shots for the suspects arrested in those reports. The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the governmental body. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562

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.

S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986). Thus, we assume to the extent the requested book-in photographs or mug shots existed when the city received the request for information, you have released them to the requestor. If not, then you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

You assert the marked portions of the submitted reports are excepted under section 552.108 of the Government Code, which 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 release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984). You state the information you marked under section 552.108 relates to a pending criminal prosecution for endangering a child. The submitted reports, however, pertain to several incidents of burglary, theft, criminal mischief, and reporting suspicious behavior. You neither explain how the submitted reports relate to the pending child endangerment case, nor how release of information pertaining to various incidents would interfere with the investigation of one particular case. Accordingly, the city has failed to establish that release of the marked information would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.301(e)(1)(A). Therefore, the city may not withhold the marked information under section 552.108.

You also raise section 552.101 of the Government Code, which 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. Chapter 772 of the Health and Safety Code 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). We understand the city is within an emergency communication district that is subject to section 772.318. You claim the telephone number and address you marked are confidential under section 772.318 of the Health and Safety Code. Upon review, we agree the originating telephone number and address you marked must be withheld 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 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. 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). Upon review, we agree the criminal history record information you marked is highly intimate and embarrassing and of no legitimate public interest. Accordingly, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, you assert the Texas motor vehicle record information you marked is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). The city must withhold the Texas motor vehicle record information we marked under section 552.130.²

In summary, the city must withhold (1) the information you marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, (2) the information you marked under section 552.101 in conjunction with common-law privacy, and (3) the information we marked under section 552.130 of the Government Code. As you raise no other exceptions to disclosure, the remaining information must be released.³

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.

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the information being released includes a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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,

A handwritten signature in black ink, appearing to read "Bob Davis", with a long, sweeping underline that extends to the right.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 382109

Enc. Submitted documents

cc: Requestor
(w/o enclosures)