



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2010

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

OR2010-15132

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# 395729 (DPD ORR# 2010-6506).

The Dallas Police Department (the "department") received a request for e-mails to or from a named individual during a specified time period. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.117, 552.127, 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) the information

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

contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The type 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. Common-law privacy also protects information pertaining to the identities of victims of sexual assault. *See* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how some of the remaining information you have marked is highly intimate or embarrassing and not of legitimate public concern. Additionally, portions of the information you have marked pertain to an individual whose identity has been withheld. Thus, the remaining information you have marked may not be withheld under section 552.101 in conjunction with common-law privacy.

You also raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). However, individuals who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer's privilege. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You state portions of the submitted information consist of the identities of citizens who contacted the department to report criminal violations. We understand the violations reported by the individuals at issue carry criminal penalties. Based upon your representations and our review, we conclude the department has demonstrated the applicability of the common-law informer's privilege to portions of the information at issue. Therefore, the department may withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we note one of the entities who reported a violation is a business entity and not a person. The informer's privilege does not protect the identity of a corporation that reports a violation of the law, as a corporation is not an individual. *See Roviario v. United States*, 353 U.S. 53, 59 (1957), Open Records Decision No. 515 at 2 (1988). Further, portions of the information at issue identify complaints who you have not demonstrated reported the violation to the department or "administrative officials having a duty of inspection or law enforcement within their particular spheres." Rather, the complaints at issue were forwarded to the department by the city officials to whom the marked individual made the report. Additionally, one of the marked individuals did not make the initial report of the violation of the law. Thus, the department may not withhold the remaining information you have marked under section 552.101 in conjunction with the common-law informer's privilege.

You claim section 552.108 of the Government Code for portions of the remaining information. 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). A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state portions of the remaining information relate to pending criminal investigations. Based upon your representation, we conclude release of the information at issue will 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we find the department may withhold the remaining information you marked that pertains to pending criminal investigations under section 552.108(a)(1) of the Government Code.

Section 552.108(b)(1) of the Government Code 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.) (Gov't Code § 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 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 the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and public access to these numbers could interfere with that purpose. *Id.*

You inform us the cellular telephone numbers you have marked under section 552.108 are assigned to department police officers “in the field to carry out their law enforcement responsibilities.” You assert the release of the marked cellular telephone numbers would interfere with law enforcement because it would interfere with the ability of officers to perform their job duties. Based on your representations and our review of the information at issue, we conclude the department may withhold the officers’ cellular telephone numbers you have marked under section 552.108(b)(1) of the Government Code.

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 552.127 of the Government Code excepts from disclosure information that “identifies a person as a participant in a neighborhood crime watch organization and relates to the name, home address, business address, home telephone number, or business telephone number of the person.” *Id.* § 552.127(a); *see also id.* § 552.127(b) (defining “neighborhood crime watch organization”). You indicate portions of the submitted information identify individuals who are members of neighborhood crime watch organizations. Based on your representation, we find the department must withhold the information you have marked, as well as the information we have marked, under section 552.127 of the Government Code.

Section 552.137 of the Government Code provides “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). The e-mail addresses you have marked are not of the type specifically excluded by section 552.137(c). Accordingly, the department must withhold the

e-mail addresses within the remaining information under section 552.137 of the Government Code, unless the owners consent to their disclosure.²

In summary, the department must withhold: (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, (2) the information you have marked under section 552.117(a)(2) of the Government Code; (3) the information you have marked, as well as the information we have marked, under section 552.127 of the Government Code; and (4) the e-mail addresses within the remaining information under section 552.137 of the Government Code, unless the owners consent to their disclosure. The department may withhold: (1) the information we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege; (2) the remaining information you marked that pertains to pending criminal investigations under section 552.108(a)(1) of the Government Code; and (3) the officers' cellular telephone numbers you have marked under section 552.108(b)(1) 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tp

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 an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 395729

Enc: Submitted documents

c: Requestor
(w/o enclosures)