



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2010

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

OR2010-15911

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# 397362 (DPD ORR# 2010-7067).

The Dallas Police Department (the "department") received a request for all disciplinary records pertaining to a named officer. You claim that the submitted information is excepted from disclosure under sections 552.101, 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

Initially, you state a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-13917 (2009). In that decision, we determined the department: (1) must withhold portions of the information at issue under sections 552.117, 552.130, and 552.136 of the Government Code; (2) must withhold portions of the information under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), unless the department receives the required written consent for release under sections 773.092 and 773.093 of the Health and Safety Code; (3) may withhold portions of the information at issue under section 552.108 of the

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.

Government Code; and (4) must release the remaining information. You inform us the law, facts, and circumstances on which the prior ruling was based have not changed. Accordingly, with regard to the requested information that is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude the department must continue to rely on Open Records Letter No. 2009-13917 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the requested information is not encompassed by the previous ruling, we will address your claimed exceptions under the Act.

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. Section 552.101 encompasses chapter 772 of the Health and Safety Code, which makes the originating telephone numbers and addresses of certain 9-1-1 calls confidential. This chapter authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

Although you raise section 772.318 for the telephone numbers and addresses of the 9-1-1 caller you have highlighted in the submitted call for service review report, we understand Dallas County to contain a population of more than two million so as to fall within the scope of section 772.118. We note section 772.118 only applies to information furnished by a 9-1-1 service supplier. *See* Health & Safety Code § 772.118(a). Therefore, to the extent the telephone numbers and addresses you marked in the call for service review report are the originating telephone numbers and addresses supplied by a 9-1-1 service supplier, this information must be withheld under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code. However if the marked telephone numbers and addresses were not provided by a 9-1-1 service supplier, this information may not be withheld under section 552.101 in conjunction with section 772.118.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668

(Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983); *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). We find the alleged sexual assault victim's identifying information you marked, as well as the additional identifying information we have marked, is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the marked information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code 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. The department must withhold the department peace officer's address you marked under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" *Id.* § 552.130(a)(1), (2). We find the department must withhold the Texas driver's license information, license plate information, and vehicle identification numbers you marked, as well as the additional driver's license number and license plate number we have marked, under section 552.130. However, we find the vehicle model number you marked does not constitute Texas motor vehicle information for purposes of section 552.130 and therefore may not be withheld on that basis. As you raise no further exceptions for this model number, it must be released.

Section 552.136 of the Government Code 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." Gov't Code § 552.136(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. Therefore, the department must withhold the insurance policy number you marked under section 552.136 of the Government Code.²

²In Open Records Decision No. 684 (2009), this office issued a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the department must continue to rely on Open Records Letter No. 2009-13917 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the telephone numbers and addresses you marked in the call for service review report are the originating telephone numbers and addresses supplied by a 9-1-1 service supplier, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code. The department must withhold the marked sexual assault victim's identifying information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the peace officer's address you marked under section 552.117(a)(2) of the Government Code. Except for the vehicle model number, the department must withhold the information you marked, as well as the additional information we have marked, under section 552.130 of the Government Code. The department must withhold the insurance policy number you 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,



James McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 397362

Enc. Submitted documents

c: Requestor
(w/o enclosures)