



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2010

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

OR2010-19313

Dear Ms. McClellan:

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# 402256 (DPD Request No. 2010-8656).

The Dallas Police Department (the "department") received a request for the requestor's internal affairs file, the requestor's personnel and application file, and all computer-aided dispatch and call information related to the call underlying the internal affairs investigation. You state you have released the personnel and application file. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted the requested computer-aided dispatch and call information for our review. To the extent information regarding this portion of the request existed on the date the department received this request and was maintained by the department, we assume the department has released it. If the department has not released any such information, then the department 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).*

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 261.201 of the Family Code provides in part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The submitted internal affairs report contains an offense report that was used or developed in an investigation of alleged child abuse or neglect. This offense report, which we have marked, is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code); *see also* Penal Code § 22.04(c) (defining "child" for purposes of injury to a child as a person 14 years of age or younger). You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the information we have marked is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which provides in relevant part:

...

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). You assert a portion of the submitted information constitutes EMS records maintained by an EMS provider documenting emergency medical services provided to a patient by EMS personnel. Upon review, we agree the information we have marked constitutes EMS records that are confidential under section 773.091. Therefore, the department must withhold the marked EMS records 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).¹ *See id.* §§ 773.092, .093; Open Records Decision No. 632 (1995).

Next, you assert some of the remaining information is protected by section 552.136 of the Government Code, which provides that “[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); *see id.* § 552.136(a) (defining “access device”). You inform us an employee’s identification number is used in conjunction with one additional digit in order to access the employee’s credit union account. Thus, we find the department must withhold the identification numbers you have marked under section 552.136 of the Government Code.

We note the submitted information includes information that is excepted from disclosure under section 552.102(a) of the Government Code.² Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010) (Dec. 20, 2010, motions for reconsideration and rehearing pending). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

In summary, the department must withhold the offense report we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the EMS records we have marked under

¹As our ruling is dispositive, we need not address your remaining argument for this information.

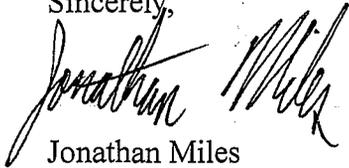
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions.

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 consent for release of that information. The department must withhold the information you have marked under section 552.136 of the Government Code. The department must withhold the information we have marked under section 552.102(a). 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, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/eeg

Ref: ID# 402256

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released in this instance contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a). If the department receives another request for the same information from a different requestor, the department should again seek a decision from this office.