



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2011

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

OR2011-00004

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# 404674 (PIR No. 2010-9401).

The Dallas Police Department (the "department") received a request for information relating to two specified service numbers. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.¹

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 common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We also have concluded a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person, and is generally not of legitimate concern to the public. Cf. *United States 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).

We note the information you seek to withhold under common-law privacy is related to pending prosecutions that generally involve allegations of domestic violence. Information relating to an offense for which an individual is currently involved in the criminal justice system does not implicate privacy concerns. Cf. Gov't Code § 411.081(b). Moreover, information relating to domestic violence is generally not protected by common-law privacy. See Open Records Decision No. 611 at 1 (1992) (family violence is a crime, not a private matter). Having reviewed the information you contend is private, we find the information in question is generally not highly intimate or embarrassing and a matter of no legitimate public concern. Therefore, with the exception of two items of information we have marked, we conclude the department may not withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We conclude the information we have marked is highly intimate or embarrassing and not a matter of legitimate public interest. Thus, the information we have marked is protected by common-law privacy and must be withheld on that basis under section 552.101.

Section 552.108 of the Government Code 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have marked the information the department seeks to withhold under section 552.108. You state the marked information is related to pending criminal prosecutions. Based on your representations, we conclude the department may withhold the marked information under section 552.108(a)(1) of the Government Code. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

You also claim section 552.117 of the Government Code for personal information contained in the submitted police reports. We note section 552.117 is not applicable to information contained in these reports, which are law enforcement records of the department rather than personnel records held by the department as an employer of the individual concerned. Nevertheless, the department may be required to withhold the information in question under section 552.1175 of the Government Code.² This section is applicable to information relating to a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See* Gov't Code § 552.1175(a). Section 552.1175(b) provides as follows:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Id. § 552.1175(a)-(b). One of the submitted police reports identifies the individual listed as the complainant in the reports as a recruit enrolled in the department's police academy. You do not indicate whether this individual either was or now is a peace officer. Nevertheless, if this individual is a peace officer, then the department must withhold the information we have marked under section 552.1175 of the Government Code to the extent the individual elects to restrict access to the marked information in accordance with section 552.1175(b).

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See id.* § 552.130(a)(1). We agree the department must withhold the Texas driver's license number you have marked under section 552.130.³

In summary: (1) the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the

²This office will raise section 552.1175 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

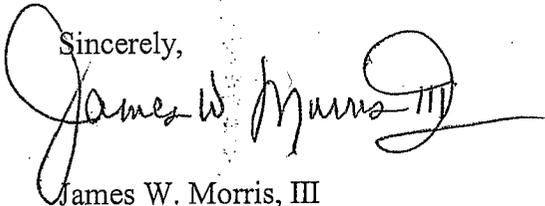
³We note this office issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information, including a Texas driver's license number under section 552.130, without the necessity of requesting an attorney general decision.

information you have marked under section 552.108 of the Government Code may be withheld under section 552.108(a)(1); (3) the department must withhold the information we have marked under section 552.1175 of the Government Code if the individual to whom the information pertains is a peace officer and to the extent she elects to restrict access to the marked information in accordance with section 552.1175(b); and (4) the Texas driver's license number you have marked must be withheld under section 552.130 of the Government Code. The department must release the rest of the submitted information.

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/vb

Ref: ID# 404674

Enc: Submitted documents

c: Requestor
(w/o enclosures)