



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2011

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

OR2011-00691

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# 405821 (DPD Public Information Request No. 2010-9894).

The Dallas Police Department (the "department") received a request for information pertaining to Internal Affairs Division control number 2010-236. You claim the requested 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 information.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 section encompasses the doctrine of common-law privacy. Common-law privacy 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

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 668, 685 (Tex. 1976). The type of information considered intimate or 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.

Upon review, we find that the information you have marked and the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the marked information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

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.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.³ Gov't Code § 552.117(a)(2). Section 552.117(a)(2) is also applicable to a peace officer's cellular telephone number, if the cellular telephone service is paid for by the officer with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117(a)(2) exception to personal cellular telephone number and personal pager number of peace officers).

You have marked an officer's personal information, which includes the officer's cellular telephone numbers. We have marked additional personal information pertaining to this officer. You have not informed us whether the cellular telephone services associated with the officer's marked cellular telephone numbers are paid for by the officer with his own funds. Thus, if the officer paid for the cellular telephone services associated with the marked

²The Office of the Attorney General will raise a mandatory exception like section 552.102 on behalf of a governmental body, but ordinarily will not raise other exceptions.

³"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

cellular telephone numbers, the department must withhold the marked telephone numbers under section 552.117(a)(2) of the Government Code. If the officer did not pay for the cellular telephone services associated with the marked cellular telephone numbers, then marked telephone numbers may not be withheld under section 552.117(a)(2). The remaining personal information you have marked and the personal information we have marked must be withheld under section 552.117(a)(2) of the Government Code.

You assert some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license; driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.⁴ Gov't Code § 552.130(a)(1), (2). We note section 552.130 of the Government Code does not apply to out-of-state motor vehicle information. Upon review, we find the department must withhold the Texas motor vehicle record information you have marked and the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides in part 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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). You seek to withhold employee identification numbers, which you have marked, under this exception. You explain that an employee's identification number is the same number used for the City of Dallas credit union accounts plus one additional number. Based on your representation, we agree that the department must withhold the employee identification numbers you have marked under section 552.136 of the Government Code.

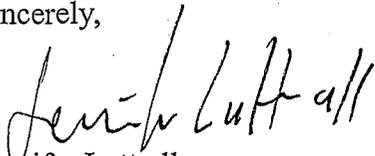
In summary, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.102(a) of the Government Code. If the officer paid for the cellular telephone services associated with the marked cellular telephone numbers, the department must withhold the marked telephone numbers under section 552.117(a)(2) of the Government Code. The department must withhold the remaining marked personal information under section 552.117(a)(2). The department must withhold the marked Texas motor vehicle record information under section 552.130 of the Government Code. The department must withhold the information you have marked under section 552.136 of the Government Code. The remaining information must be released.

⁴We note this office 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 under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 405821

Enc. Submitted documents

c: Requestor
(w/o enclosures)