



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 7, 2011

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

OR2011-01872

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# 408354 (DPD Public Information request # 2010-10593).

The Dallas Police Department (the "department") received a request for records involving a named department officer shooting a suspect while off duty. You claim the information you marked is excepted from disclosure under sections 552.101, 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

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 section 773.091 of the Health and Safety Code, which provides in relevant part:

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

(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). Except for the information specified in section 773.091(g), emergency medical services ("EMS") records are deemed confidential under section 773.091 and may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. Upon review, we find the patient care reports you marked reveal the identity, evaluation, or treatment of a patient by emergency medical services personnel. Thus, we agree the marked patient care reports constitute EMS records that are subject to chapter 773 of the Health and Safety Code. Accordingly, with the exception of the information subject to section 773.091(g), which is not confidential, the submitted EMS records must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *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.

We understand the City of Dallas is part of an emergency communication district established under section 772.318. You have marked the telephone number of a 9-1-1 caller that the department seeks to withhold. The department must withhold the marked number under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if it was furnished by a 9-1-1 service supplier. If the marked telephone number was not provided by a 9-1-1 service supplier, this information may not be withheld under section 552.101 in conjunction with section 772.318. You also marked the address of

a cellular telephone tower nearest the location of the caller. Such an address is not the originating address of the 9-1-1 caller, and, therefore, may not be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find the information you marked and the information we marked reveals a criminal history compilation that is of no legitimate public interest. Therefore, the department must withhold the marked information under section 552.101 in conjunction with common-law privacy.

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 [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130(a). Thus, the department must withhold the Texas motor vehicle record information you have marked, as well as the information we marked, pursuant to 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 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 numbers you have marked under section 552.136 of the Government Code.

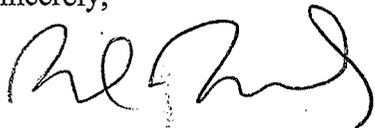
In summary, with the exception of the information subject to section 773.091(g) of the Health and Safety Code, the department must withhold the patient care reports you marked under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. The department must withhold the telephone number you marked

under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. 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 you marked and the information we marked under section 552.130 of the Government Code, as well as the information you marked under section 552.136 of the Government Code.² The remaining submitted 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 408354

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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