



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2011

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

OR2011-04132

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# 412428 (PIR No. 2011-00122).

The Dallas Police Department (the "department") received a request for information relating to requests for control numbers issued during December 2010. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the representative sample of information you submitted.²

¹Although you initially also raised sections 552.103, 552.107, 552.111, 552.1175, 552.127, and 552.137 of the Government Code, you have submitted no arguments in support of the applicability of those exceptions. Accordingly, this decision does not address sections 552.103, 552.107, 552.111, 552.1175, 552.127, and 552.137. *See* Gov't Code § 552.137(e)(1)(A) (governmental body must submit written comments stating why claimed exceptions apply to information at issue).

²This letter ruling assumes 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).

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). To demonstrate the applicability of common law privacy, both elements of the test must be established. *Id.* at 681-82. Common-law privacy protects the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See *id.* 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). In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the identities of victims and witnesses of alleged sexual harassment were held to be protected by common-law privacy. See *id.* at 525. This office has concluded other types of information 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 recognized public employees may have a privacy interest in their drug test results. See Open Records Decision Nos. 594 (1991) (suggesting identification of individual as having tested positive for use of illegal drug may raise privacy issues), 455 at 5 (1987) (citing *Shoemaker v. Handel*, 619 F. Supp. 1089 (D.N.J. 1985), *aff'd*, 795 F.2d 1136 (3rd Cir. 1986)).

You have marked the information you claim is protected by common-law privacy. Having reviewed the information at issue, we conclude the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. You also claim common-law privacy for marked information relating to a drug test administered to a police officer. This office has determined the public generally has a legitimate interest in public employment and public employees, particularly those who are involved in law enforcement. See Open Records Decision No. 444 at 6 (1986) (public has genuine interest in information concerning law enforcement employee's qualifications and performance and circumstances of his termination or resignation). We therefore conclude the marked information relating to the drug test may not be withheld under section 552.101 in conjunction with common-law privacy and must be released. Although the remaining information you seek to withhold under section 552.101 would ordinarily be private, the information in question pertains to an individual whose identity is protected by another exception to disclosure. We therefore conclude the remaining information you have marked need not be withheld under section 552.101 in conjunction with common-law privacy and must be released.

You also claim section 552.108 of the Government Code, which 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).

You have marked the information you seek to withhold under section 552.108(a)(1). We understand the department maintains the marked information for administrative purposes. We note section 552.108 is generally not applicable to records of an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (addressing statutory predecessor to Gov't Code § 552.108). In this instance, however, you state the department's Public Integrity Unit has requested protection for the marked information because its release would interfere with a pending criminal investigation. Based on your representations, we conclude the department may withhold the information you have marked 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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Next, we address your claims under sections 552.117, 552.130, and 552.136 of the Government Code. Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether a peace officer has family members, regardless of whether the officer complies with sections 552.024 or 552.1175 of the Government Code. *See Gov't Code § 552.117(a)(2)*. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. We agree the department must withhold the information you have marked under section 552.117(a)(2) of the Government Code. We have marked additional information the department must also withhold on this basis if the information is a peace officer's home address. If the information we have marked is not a peace officer's home address, it may not be withheld under section 552.117(a)(2).

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 or a personal identification document issued by an agency of this state or a local agency authorized to issue a personal identification document. *See id.* § 552.130(a)(1), (3). We agree the department must withhold the Texas driver's license and personal identification information you have marked under section 552.130 of the Government Code.³

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 state the employee identification numbers you have marked are the same numbers used for city credit union

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

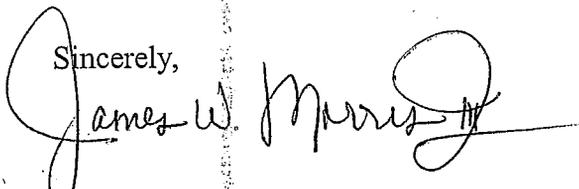
bank accounts. We agree the department must withhold the marked employee identification numbers under section 552.136 of the Government Code.

In summary, the department (1) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) may withhold the information you have marked under section 552.108(a)(1) of the Government Code; (3) must withhold the information you have marked under section 552.117(a)(2) of the Government Code, as well as the additional information we have marked if the information is a peace officer's home address; and (4) must withhold the information you have marked under sections 552.130 and 552.136 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,



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

JWM/em

Ref: ID# 412428

Enc: Submitted documents

c: Requestor
(w/o enclosures)