



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 10, 2011

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

OR2011-08297

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# 420157 (DPD Public Information request #2011-2531).

The Dallas Police Department (the "department") received a request for information related to a specified incident number and the total number of police officers employed on two specified dates, including a breakdown by race. You claim the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.

Initially, we note you have submitted information pertaining to only the specified incident number. You state the department submitted a representative sample of information; however, no portion of the submitted representative sample pertains to the total number of police officers employed on two specified dates and a breakdown by race. Thus, we find the submitted information is not representative of the information sought in the remaining items of the request. Please be advised this open records letter applies to only the types of information you have submitted for our review. Therefore, this opinion does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). To the extent information

responsive to the portion of the request seeking the total number of police officers employed on two specified dates and a breakdown by race existed when the request was received, we assume you have released it. If you have not released any such information, you must do so at this time. *See id.* §§ 552.301, .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. Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. *See* Open Records Decision No. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find most of the information you have marked, in addition to the information we have marked, is highly intimate or embarrassing and not of legitimate public interest. However, some of the information you have marked is not highly intimate or embarrassing or is of legitimate public interest. This information, which we have indicated, may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the remaining information you have marked, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.¹

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code §§ 552.117, .024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. You state some of the remaining information, which you have marked, consists of personal

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

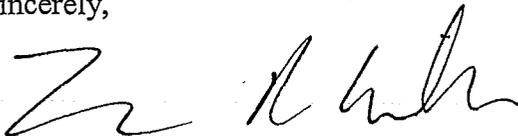
information of a City of Dallas (the "city") official who elected to withhold his information prior to the receipt of the request. However, section 552.117 applies only to records that a governmental body is holding in an employment capacity. The submitted information consists of law enforcement records maintained by the department and is not held by the department or city as an employer. Therefore, we find section 552.117(a) of the Government Code does not apply in this situation, and the department may not withhold any portion of the information you have marked on that basis.

In summary, with the exception of information we have marked for release, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 420157

Enc. Submitted documents

c: Requestor
(w/o enclosures)