



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2011

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

OR2011-11588

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# 426689 (DPD PIR# 2011-04461).

The Dallas Police Department (the "department") received a request for all public integrity records pertaining to a named former department officer. You claim portions of the requested investigation records are excepted from disclosure under sections 552.101, 552.108, 552.117, 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 552.108(a)(1) 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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1),

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

.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have marked in the investigation records and indicated on the audio and video recordings pertain to a pending criminal investigation. Based on this representation and our review, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *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). Therefore, the department may withhold the information you have marked and indicated under section 552.108(a)(1) of the Government Code.²

Section 552.108(b)(1) of the Government Code excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” Gov’t Code § 552.108(b)(1). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). You have marked a department officer’s cellular telephone number in the remaining investigation records and indicated it is excepted from disclosure under section 552.108(b)(1). You have not, however, provided any arguments explaining how section 552.108(b)(1) applies to the marked telephone number. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Consequently, the department may not withhold the cellular telephone number you have marked under section 552.108(b)(1) of the Government Code. As you have not claimed any other exceptions to disclosure for this information, the department must release the officer’s marked cellular telephone number.

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 laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI

²As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure for portions of this information.

the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. You have marked the information in the remaining investigation records you contend constitutes CHRI that is confidential under chapter 411. Upon review, we agree the information you have marked must be withheld under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

You generally assert some of the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.³ You have not, however, marked, or otherwise indicated, what information you claim is excepted by this provision. *See* Gov’t Code § 552.301(e)(2) (governmental body must label copy of information at issue to indicate which exceptions apply to which parts of the information). Furthermore, you have not provided any arguments to explain how section 772.318 applies to any of the remaining information. Consequently, you have failed to demonstrate the applicability of section 772.318 of the Health and Safety Code to the remaining information, and the department may not withhold any of the remaining information on this basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (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 S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The types of information considered highly 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. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987) (prescription drugs,

³Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000 and makes the originating telephone number and address of a 9-1-1 caller that are furnished by a 9-1-1 service supplier confidential. *See* Health & Safety Code § 772.318; *see also* Open Records Decision No. 649 (1996) at 2.

illnesses, operations, and physical handicaps). Furthermore, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision No. 545 (1990); *see also* Open Records Decision No. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). Additionally, an individual's criminal history when compiled by a governmental body may be protected under common-law privacy. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). You claim the information you have marked in the remaining investigation records and indicated on the submitted audio recording is protected by common-law privacy. Upon review, we agree most of the information you seek to withhold is protected by common-law privacy. You have not, however, demonstrated how a portion of the information you have marked is highly intimate or embarrassing. Thus, the department may not withhold that information, which we have marked for release, on the basis of common-law privacy. The department, however, must withhold the remaining information you have marked and indicated, as well as the information we have marked in the remaining investigation records and indicated on the audio recording, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, 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 section 552.024 or section 552.1175 of the Government Code.⁴ Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). You have marked in the remaining investigation records and indicated in the remaining video recording the information you claim is excepted under section 552.117. We note the information at issue pertains to a department officer and a former department officer. The department must withhold the information you have marked and indicated, and the additional information we have marked, regarding the department officer under section 552.117(a)(2) of the Government Code. It is unclear, however, whether or not the former department officer is currently a licensed peace officer as defined by article 2.12. Thus, if the former department officer is a currently licensed peace officer as defined by article 2.12, the department must withhold his information you have marked, and the additional information we have indicated on the video recording, under section 552.117(a)(2) of the Government Code. If, however, the former department officer is not a currently licensed peace officer, his personal information may not be withheld under section 552.117(a)(2) of the Government Code.

However, if the former department officer is no longer a licensed peace officer, then his personal information may be subject to section 552.117(a)(1) of the Government Code,

⁴"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). 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 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. Therefore, if the former department officer is no longer a licensed peace officer as defined by article 2.12, then to the extent he timely elected confidentiality under section 552.024, the department must withhold his information you have marked, and the additional information we have indicated on the video recording, under section 552.117(a)(1) of the Government Code. If, however, the former department officer is no longer a licensed peace officer and did not timely elect to keep his personal information confidential, his marked and indicated personal information must be released.

You assert some of the remaining information is excepted under section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as amendments to Gov't Code § 552.130(a)(1), (2)). The department must withhold the driver's license information you have marked, as well as the motor vehicle record information we have marked in the remaining information and indicated on the audio recording, under section 552.130 of the Government Code.

You claim portions of the remaining information are excepted under section 552.136 of the Government Code, which provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, 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.

Gov't Code § 552.136. You seek to withhold the bank account and employee identification numbers you have marked in the remaining information. We note the remaining information also includes a bank routing number, which we have marked. We conclude the bank account number you have marked and the bank routing number we have marked constitute access device numbers for purposes of section 552.136. Furthermore, you inform us an employee's identification number is used in conjunction with one additional digit in order to access the employee's credit union account. Thus, the department must withhold the bank account and employee identification numbers you have marked, and the bank routing number we have marked, in the remaining information under section 552.136 of the Government Code.

In summary, the department may withhold the information you have marked and indicated under section 552.108(a)(1) of the Government Code. The department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. With the exception of the information we have marked for release, the department must withhold the information you have marked and indicated, as well as the information we have marked and indicated, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you have marked and indicated, and the additional information we have marked, regarding the department officer under section 552.117(a)(2) of the Government Code. If the former department officer is a currently licensed peace officer as defined by article 2.12, the department must withhold his information you have marked, and the additional information we have indicated on the video recording, under section 552.117(a)(2) of the Government Code. If the former department officer is no longer a peace officer as defined by article 2.12, then to the extent he timely elected confidentiality under section 552.024 of the Government Code, the department must withhold his information you have marked, and the additional information we have indicated on the video recording, under section 552.117(a)(1) of the Government Code. The department must withhold the information you have marked, as well as the additional information we have marked and indicated, under section 552.130 of the Government Code. The department must withhold the bank account and employee identification numbers you have marked, and the bank routing number we have marked, in the remaining information under section 552.136 of the Government Code.⁵ The department must release the remaining information.

⁵We 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 license plate numbers under section 552.130 of the Government Code and bank account and bank routing numbers under section 552.136 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,

A handwritten signature in blue ink that reads "Leah B. Wingerson". The signature is written in a cursive style.

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 426689

Enc. Submitted documents

c: Requestor
(w/o enclosures)