



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2012

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2012-03309

Dear Ms. Armstrong:

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# 446947 (ORR# 2011-11356).

The City of Dallas and the Dallas Police Department (collectively, the "city") received a request for (1) all complaints by any Dallas County employee regarding events occurring in August 2011 involving a named individual and any Dallas County Magistrate Judge, and (2) all communications from the Texas Rangers or the Office of the Attorney General regarding any actions of a named individual in August 2011.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We note the city sought and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We 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.

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 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 satisfied. *Id.* at 681-82. 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, illnesses, operations, and physical handicaps). 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). Upon review, we find the information you have marked, and the additional information we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the marked information 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.³ Gov’t Code § 552.117(a)(2). We note section 552.117 also encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use); *see also* Open Records Decision No. 670 at 6 (2001) (determining a governmental body may withhold the personal cellular telephone pager number of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision). In this instance, it is unclear whether the employees whose information you have marked are currently licensed peace officers as defined by article 2.12. Accordingly, if the employees at issue are currently licensed peace officers as defined by article 2.12, then the city must withhold the information you have marked, as well as the additional information we have marked, under section 552.117(a)(2) of the Government Code.⁴ However, the city may not withhold a cellular telephone number under this exception unless the officer pays for the cellular telephone service.

If the employees at issue are not currently licensed peace officers, then the marked personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts

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

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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. Gov't Code § 552.117(a)(1). As noted above, section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service or pager service is not paid for by a governmental body. *See* ORD 506 at 5-6. 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. You do not indicate whether the employees whose information is at issue requested confidentiality pursuant to section 552.024. Accordingly, if these employees timely elected confidentiality, then the city must withhold the information you have marked, as well as the additional information we have marked, under section 552.117(a)(1); however, the city may only withhold the marked cellular telephone numbers if the numbers are not paid for by the city. If the employees did not timely elect confidentiality, the city may not withhold any of the marked information under section 552.117(a)(1).

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). In Open Records Decision No. 506 (1988), this office determined that the statutory predecessor to section 552.108(b) excepted from disclosure "cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities." Open Records Decision No. 506 at 2 (1988). We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.*

You state the duty cellular phones of law enforcement officers are used to provide the city police department immediate access to its personnel. You state release of this information would interfere with law enforcement. Based on your representations and our review, if the marked cellular telephone numbers of police officers are paid for by the city, we conclude that the city may withhold the cellular telephone numbers at issue under section 552.108(b)(1) of the Government Code. However, you have failed to demonstrate

that the remaining information you have marked would interfere with law enforcement and crime prevention. Thus, the city may not withhold the remaining information you have marked under section 552.108(b)(1).

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit, title or registration, or a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue a personal identification document. *See* Gov't Code § 552.130(a). Upon review, we find the city must withhold the information you have marked under section 552.130.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Accordingly, the city must withhold the personal e-mail addresses you have marked, and the additional e-mail addresses we have marked, under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their public disclosure.⁵

In summary, the city must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. If the employees at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, then the city must withhold the information you have marked, as well as the additional information we have marked, under section 552.117(a)(2) of the Government Code. If the employees at issue are not licensed peace officers, but timely elected confidentiality, then the city must withhold the information you have marked, as well as the additional information we have marked, under section 552.117(a)(1) of the Government Code. However, the city may only withhold the marked cellular telephone numbers under section 552.117 if the numbers are not paid for by the city. If the marked cellular telephone numbers of police officers are paid for by the city, the city may withhold the cellular telephone numbers at issue under section 552.108(b)(1) of the Government Code. The city must withhold the information you have marked under section 552.130 of the Government Code. The city must withhold the personal e-mail addresses you have marked, and the additional e-mail addresses we have marked, under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their public disclosure. 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.

⁵Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 446947

Enc. Submitted documents

cc: Requestor
(w/o enclosures)