



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 8, 2012

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

OR2012-03545

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# 447285 (DPD PIR No. 2011-11540).

The Dallas Police Department (the “department”) received a request for memos, e-mails, or other writings pertaining to the location of blood draws and unsanitary conditions in the “Intoxilyzer rooms” for certain time periods. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 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. Section 552.101 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

¹We 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.

information is not of legitimate concern to the public. *Indus Found. v. Tex Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and 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 found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision No. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Upon review, we agree the information you have marked is highly intimate or embarrassing and of no legitimate concern to the public. Therefore, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); see also Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). 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." ORD 506 at 2. 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 submitted information contains the cellular telephone numbers of law enforcement officers. You argue release of this information would interfere with law enforcement because it would interfere with the ability of these officers to perform their job duties. Therefore, to the extent the numbers you have marked constitute the work cellular telephone numbers of department officers, they may be withheld under section 552.108(b)(1). However, the information at issue contains numbers of police officers from the Irving Police Department and the Houston Police Department. You have provided no representation from these police departments that the release of the work cellular telephone numbers of these officers would interfere with law enforcement and crime prevention. As such, these cellular telephone numbers may not be withheld under section 552.108(b)(1) of the Government Code.

We note portions of the remaining information may be subject to section 552.1175 of the Government Code.² Section 552.1175 provides in relevant part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Section 552.1175 also encompasses a peace officer's personal cellular telephone number if the officer pays for the cellular telephone service with his or her own personal funds. Upon review, we find the department must withhold the cellular telephone numbers we have marked under section 552.1175 if the individuals to whom this information concerns are currently licensed peace officers, elect to restrict access to their information in accordance with section 552.1175(b), and pay for the cellular telephone service with their own personal funds. However, the department may not withhold the marked information under section 552.1175 these individuals are not peace officers, no election is made, or the officers concerned did not pay for the cellular telephone service with their own personal funds.

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the cellular telephone numbers you have marked of department officers under section 552.108(b)(1) of the Government Code. The department must withhold the cellular telephone numbers we have marked under section 552.1175 if the individuals to whom this information concerns are currently licensed peace officers, elect to

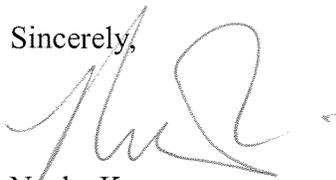
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

restrict access to their information in accordance with section 552.1175(b), and pay for the cellular telephone service with their own personal funds. However, the department may not withhold the marked information under section 552.1175 these individuals are not peace officers, no election is made, or the officers concerned did not pay for the cellular telephone service with their own personal funds. The department must release the remaining 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 447285

Enc. Submitted documents

cc: Requestor
(w/o enclosures)