



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2012

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

OR2012-11120

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# 459140 (PIR No. 2012-04943).

The Dallas Police Department (the "department") received a request for a specified police report. You claim some of the submitted information is excepted from disclosure pursuant to sections 552.101, 552.108, 552.1175, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we must address the department's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). You state the department received the request on April 24, 2012. Accordingly, the department's ten-business-day deadline was May 8, 2012. However, the envelope in which you submitted your request for

¹Although you raise section 552.117 of the Government Code, we note section 552.1175 is the proper exception to raise in this instance because the department does not hold the information at issue in an employment capacity.

²We assume the "representative sample" of information 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.

a decision from this office bears a postmark of May 9, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Thus, we find the department failed to comply with the procedural requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You raise section 552.108 of the Government Code, which is a discretionary exception that may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). However, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). You state the Dallas County District Attorney's Office (the "district attorney's office") asserts an interest under section 552.108 of the Government Code in the information at issue. Therefore, we will consider whether the department may withhold the submitted information under section 552.108 on behalf of the district attorney's office. Further, sections 552.101, 552.1175, and 552.130 of the Government Code can provide compelling reasons for non-disclosure. Accordingly, we will address your claims for the submitted information.

We note you seek to withhold the telephone number of a 9-1-1 caller. In Open Records Letter No. 2011-17075 (2011), this office issued a previous determination to the department authorizing it to withhold the originating telephone number of a 9-1-1 caller furnished to the department by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code without requesting a decision from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Provided the originating telephone number of the 9-1-1 caller at issue was furnished to the department by a service supplier established in accordance with chapter 772, the department must withhold the marked telephone number in accordance with the previous determination issued in Open Records Letter No. 2011-17075.

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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the district attorney’s office objects to release of the information you have marked because its release would interfere with a pending criminal prosecution. Based upon this representation and our review, we conclude release of the information at issue 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). Accordingly, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov’t Code § 552.1175. Section 552.1175 also encompasses a cellular telephone number, if the cellular service is not paid for by a governmental body. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure.” *Id.* § 552.1175(a)(1). Therefore, the department must withhold the cellular telephone number you have marked under section 552.1175 of the Government Code if the individual whose information is at issue is currently a licensed peace officer, elects to restrict access to his information in accordance with section 552.1175(b), and the cellular telephone service is not paid for by a governmental body. If the individual whose information is at issue is not currently a licensed peace officer, does not elect to restrict access to his information in accordance with section 552.1175(b), or the cellular telephone service is paid for by a governmental body, the department may not withhold this marked information under section 552.1175 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country [or] a motor vehicle title or registration issued by an agency of this state or another state or country[.]” *See* Gov’t Code § 552.130(a). Upon review, we agree the department must withhold the information you have marked under section 552.130 of the Government Code.

In summary, provided the originating telephone number of the 9-1-1 caller at issue was furnished to the department by a service supplier established in accordance with chapter 772, the department must withhold the marked telephone number in accordance with the previous determination issued in Open Records Letter No. 2011-17075. The department may withhold the information it has marked under section 552.108(a)(1) of the Government Code. The department must withhold the cellular telephone number you have marked under section 552.1175 of the Government Code if the individual whose information is at issue is

currently a licensed peace officer, elects to restrict access to his information in accordance with section 552.1175(b), and the cellular telephone service is not paid for by a governmental body. The department must withhold the information you have marked under section 552.130 of the Government Code. The remaining information must be released.³

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 459140

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released contains a social security number that does not belong to the requestor. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b). We further note the information being released contains information to which the requestor has a right of access. *See id.* § 552.023(a) (person has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Because such information may be confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.