



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 22, 2012

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

OR2012-13239

Dear Ms. Middlebrooks and 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# 462671 (PIR Nos. 2012-06813 and 20123-08453).

The Dallas Police Department (the "department") received two requests from the same requestor for public integrity or internal affairs records related to a former police officer accused of associating with a prostitute, including records of a specified public integrity investigation. You claim some of the requested information is 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 information you submitted.<sup>1</sup>

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

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<sup>1</sup>This letter ruling assumes the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to records of an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (addressing statutory predecessor to Gov't Code § 552.108); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.) (Gov't Code § 552.108(b)(1) not applicable to information held by law enforcement agency as prospective employer). In this instance, however, you state release of the information you have marked would interfere with a pending criminal investigation. Based on your representations, we conclude section 552.108(a)(1) is generally applicable to the marked information. *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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes an identification and description of the complainant and a detailed description of the offense, but does not include information related to witnesses or to a suspect who was not arrested. The department must release basic information, even if the information does not literally appear on the front page of an offense or arrest report.

You also contend some of the submitted information, including the complainant's identity, is protected by common-law privacy under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In this instance, the complainant was the alleged victim of a sexual offense. Common-law privacy protects information that either identifies or tends to identify a victim of a sexual assault or other sex-related offense. *See Indus. Found.*, 540 S.W.2d at 683; Open Records Decision Nos. 393 (1983), 339 (1982). We therefore conclude the department must withhold the information you have marked, along with the additional information we have marked, that identifies or tends to identify the complainant under section 552.101 of the Government Code in conjunction with common-law privacy. Otherwise, the department must release basic information in accordance with section 552.108(c). *See* ORD 127 at 3-4. The department may withhold the rest of the

submitted information related to the investigation you have marked under section 552.108(a)(1) of the Government Code.

We note the remaining records at issue include criminal history information compiled by the department. This office has determined a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Moreover, a private citizen's criminal history is generally not of legitimate concern to the public. We therefore conclude the department must withhold the criminal history information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

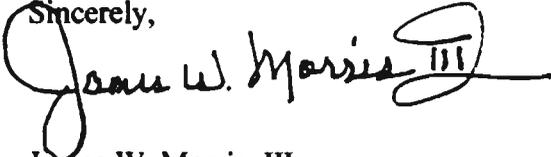
Lastly, section 552.136 of the Government Code provides in part that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). You state the employee identification numbers you have marked are the same numbers used for city credit union bank accounts. We agree the department must withhold the marked employee identification numbers under section 552.136 of the Government Code.

In summary, the department (1) may withhold the information related to the pending investigation you have marked under section 552.108(a)(1) of the Government Code, except for basic information under section 552.108(c), which must be released; (2) in releasing basic information, must withhold the information you have marked and the additional information we have marked that identifies or tends to identify the complainant under section 552.101 of the Government Code in conjunction with common-law privacy; (3) must withhold the criminal history information we have marked under section 552.101 in conjunction with common-law privacy; and (4) must withhold the employee identification numbers you have marked under section 552.136 of the Government Code. The rest of the submitted information must be released. As we are able to make these determinations, we need not address the other exceptions you claim.

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](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,  


James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/bhf

Ref: ID# 462671

Enc: Submitted information

c: Requestor  
(w/o enclosures)