



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2012

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

OR2012-13325

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# 462691 (DPD No. 2012-06635).

The Dallas Police Department (the "department") received a request for information regarding Internal Affairs Division's control numbers for the month of May 2012. You claim that the submitted information is excepted from disclosure pursuant to sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 release of the requested information would interfere with law enforcement. *See id.* § .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the criminal investigation or prosecution of an officer's alleged misconduct. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also City of Fort Worth v.*

Cornyn, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.) (section 552.108 not applicable to information police department holds as employer); Open Records Decision No. 350 at 3-4 (1982).

In this instance, the submitted information pertains to internal affairs investigations. However, you represent to this office that some of the submitted information relates to pending criminal investigations, and that release of the information you have marked would interfere with these investigations. Based on your representations, we determine section 552.108(a)(1) is applicable to the information you have marked, and the department may withhold this information on that basis.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). Accordingly, the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). The department states an employee's identification number is the same number used for his or her City of Dallas credit union bank account, with one additional digit. Therefore, the department must withhold the employee identification number you marked under section 552.136 of the Government Code.

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). The type of information considered 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 concluded information that either identifies or tends to identify a victim of sexual harassment must be withheld under common-law privacy. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Upon review, we find the identifying information of the sexual harassment victim you have marked is highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, the department must

withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department may withhold the information you have marked under section 552.108 of the Government Code. The department must withhold the marked information under sections 552.130 and 552.136 of the Government Code. The department must also withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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.

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/som

Ref: ID# 462691

Enc. Submitted documents

c: Requestor
(w/o enclosures)