



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 7, 2012

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

OR2012-14160

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# 464361 (ORR# 2012-07511).

The Dallas Police Department (the "department") received a request for information pertaining to service report numbers 55853Z, 55191Z, and 53287Z. You state the department has released some of the requested information pertaining to service report number 55853Z. You claim the submitted information is 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.<sup>1</sup>

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<sup>1</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

You argue portions of the submitted information are excepted under section 552.108 of the Government Code. Section 552.108(a) of the Government Code provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). Generally, subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information the release of which would interfere with a particular pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In this instance, you quote the language of subsections 552.108(a)(1) and 552.108(a)(2) in your argument to this office. You state the submitted information relates to a pending investigation or prosecution of an alleged offense. We note you have submitted documentation stating report numbers 55191Z and 53287Z have not gone to trial. Based on your representations, we conclude the release of the information you have marked under section 552.108 in report numbers 55191Z and 53287Z 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). Thus, the department may withhold the information you marked in report numbers 55191Z and 53287Z under section 552.108(a)(1) of the Government Code. However, the submitted documentation also states report number 55853Z is closed. Because you have provided contradictory assertions regarding report number 55853Z, we find you have not demonstrated the applicability of section 552.108 to the submitted audio recording of a 9-1-1 call related to report number 55853Z. Accordingly, the submitted audio recording relating to service report number 55853Z may not be withheld under section 552.108.

Next, you argue portions of the remaining information are protected by section 552.101 of the Government Code, which excepts from public disclosure “information considered to be

confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by other statutes. You argue the marked dates of birth are excepted from disclosure under section 552.101 in conjunction with section 32.51 of the Penal Code.<sup>2</sup> Section 32.51 of the Penal Code provides, in relevant part,

(b) A person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of:

- (1) identifying information of another person without the other person’s consent;
- (2) information concerning a deceased natural person, including a stillborn infant or fetus, that would be identifying information of that person were that person alive, if the item of information is obtained, possessed, transferred, or used without legal authorization; or
- (3) identifying information of a child younger than 18 years of age.

Penal Code § 32.51(b). “Identifying information” means “information that alone or in conjunction with other information identifies a person” and includes a person’s date of birth. *Id.* § 32.51(a)(1)(A). You assert the marked dates of birth meet the definition of “identifying information” under section 32.51(a)(1)(A) of the Penal Code. However, section 32.51(b) does not prohibit the transfer of identifying information of another person unless the transfer is made “with the intent to harm or defraud another[.]” *See id.* § 32.51(b). In this instance, the department’s release of the information at issue would be for the purpose of complying with the Act, and not with the intent to harm or defraud another. Therefore, section 32.51(b) of the Penal Code does not prohibit the department from transferring the requested information in this instance. Accordingly, we find the department may not withhold the marked dates of birth under section 552.101 of the Government Code in conjunction with section 32.51 of the Penal Code.

You also argue the marked dates of birth are excepted from disclosure under section 552.101 in conjunction with section 521.051 of the Business and Commerce Code. Section 521.051 of the Business and Commerce Code provides,

(a) A person may not obtain, possess, transfer, or use personal identifying information of another person without the other person’s consent and with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person’s name.

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<sup>2</sup>Although you argue the dates of birth are made confidential by section 32.52 of the Penal Code, we understand you to argue section 32.51 based on the substance of your argument.

Bus. & Comm. Code § 521.051(a) (formerly Bus. & Comm. Code § 48.101(a)). “Personal identifying information” means “information that alone or in conjunction with other information identifies an individual” and includes an individual’s date of birth. *Id.* § 521.002(a)(1)(A). You assert the marked dates of birth meet the definition of “personal identifying information” under section 521.002(a)(1) of the Business and Commerce Code. *See id.* § 521.002(a)(1). We note section 521.051(a) of the Business and Commerce Code does not prohibit the transfer of personal identifying information of another person unless the transfer is made with the intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person’s name without that person’s consent. *See id.* § 521.051(a). As noted above, in this instance, the department’s release of the information at issue would be for the purpose of complying with the Act, and not “with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value[.]” *See id.* Therefore, section 521.051(a) of the Business and Commerce Code does not prohibit the department from transferring the requested information. Accordingly, the department may not withhold the marked dates of birth under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. 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. We note dates of birth of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, dates of birth not protected under privacy). Upon review, we find you have failed to demonstrate how any of the information you have marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the information it has marked under section 552.101 in conjunction with common-law privacy.

In summary, the department may withhold the information you marked pertaining to service report numbers 55191Z and 53287Z under section 552.108(a)(1) of the Government Code. 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/bs

Ref: ID# 464361

Enc. Submitted documents

c: Requestor  
(w/o enclosures)