



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2012

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

OR2012-15929

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# 466976 (PIR# 2012-08685).

The Dallas Police Department (the "department") received a request for information related to service number 107734-z. You claim that portions of the submitted information is excepted from disclosure under 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 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. This exception encompasses information other statutes make confidential. You argue the date of birth in the remaining information is excepted from disclosure under

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.

section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code, which provides as follows:

(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.

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). 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. This office has found that information that reflects an individual's personal financial decisions and is not related to a financial transaction between the individual and a governmental body is generally excepted from disclosure under common-law privacy. *See Open Records Decision Nos. 600 (1992), 545 (1990)*. 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 portions of the submitted information are highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold this information, which we have marked, under

section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate how the marked dates of birth in the submitted information are highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold the dates of birth you have marked in the remaining information under section 552.101 in conjunction with common-law privacy.

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). Generally, a governmental body claiming section 552.108(a)(1) 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 information you have marked pertains to a case that is the subject of a suspended investigation that may be reopened. You state the release of the marked information would interfere with the criminal case. Based on your representation, we conclude the 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).

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130(a)(1), (2). Accordingly, the department must withhold the motor vehicle record information you have marked, in addition to the motor vehicle record information we have marked, under section 552.130.

Section 552.136(b) of the Government Code states 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.” *Id.* § 552.136(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Therefore, the department must withhold the insurance policy number you have marked pursuant to section 552.136 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the motor vehicle record information you have marked, in addition to the motor vehicle record information we have marked, under

section 552.130 of the Government Code and the insurance policy number you have marked under section 552.136 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, 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/akg

Ref: ID# 466976

Enc. Submitted documents

c: Requestor
(w/o enclosures)