



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2012

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

OR2012-20499

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# 474179 (ORR# 2012-12351).

The Dallas Police Department (the "department") received a request information concerning twenty-seven service numbers. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.152 of the Government Code.¹ We understand the department will redact social security numbers pursuant to section 552.147 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

We address your argument under section 552.108(a)(1) first, as it is potentially the most encompassing. 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,

¹Although you raise section 552.151 of the Government Code, we note the 82nd Texas Legislature renumbered section 552.151 to section 552.152 of the Government Code. See Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20). In addition, we understand you to raise section 552.130 of the Government Code based on the content of your markings.

²Section 552.147 of the Government Code permits a governmental body to redact the social security number of a living person without requesting a decision from this office. See Gov't Code § 552.14(b).

³We 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 those submitted to this office.

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 information you have marked relates to an active criminal investigation and release of the information would interfere with that investigation. *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). Based on your representation and our review, we agree section 552.108(a)(1) of the Government Code is applicable to the information you have marked under that exception.

We note, however, section 552.108 does not except from disclosure basic information about a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to, a sufficient portion of the narrative to include a detailed description of the offense, information regarding arresting officers and information regarding the arrested individual. *See Open Records Decision No. 127 (1976)* (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.⁴

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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. 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) (when considering prong regarding individual’s privacy interest, court recognized distinction between public records found in courthouses files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one’s criminal history). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

⁴As our ruling is dispositive, we do not address your remaining arguments for this information.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App. —Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). In Open Records Decision No. 506 (1988), this office determined the statutory predecessor to section 552.108(b) excepted from disclosure "cellular mobile phone numbers assigned to [governmental body] officials and employees with specific law enforcement responsibilities." ORD 506 at 2. We noted the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and to ensure public access to these numbers could interfere with that purpose. *Id.* Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2–3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). You state the cellular telephone numbers you have marked are assigned to police officers so they can carry out their law enforcement responsibilities in the field. Based on this representation and our review, we agree the department may withhold this information under section 552.108(b)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. *Id.* § 552.130(a)(1)–(2). However, we find some of the information you have marked is not of the type protected by section 552.130. Accordingly, with the exception of the information we have marked for release, the department must withhold the motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required

public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. You explain the release of the marked undercover officers' names and identification numbers would subject these officers to substantial threats of physical harm. Based on your representation and our review, we agree the department must withhold the information you have marked, and the additional information we have marked, under section 552.152 of the Government Code.⁵

In summary, with the exception of basic information, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. 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(b)(1) of the Government Code. The department must withhold the motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The department must withhold the information you have marked, and the additional information we have marked, under section 552.152 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

⁵As our ruling is dispositive, we do not address your remaining argument for this information.

Ref: ID# 474179

Enc. Submitted documents

c: Requestor
(w/o enclosures)