



May 22, 2002

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law & Police Division
City of Dallas
2014 Main, Room 501
Dallas, Texas 75201

OR2002-2752

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163303.

The City of Dallas (the "city") received a request for information relating to a former police officer, including all grievance reports and memoranda to superiors written by the officer and internal affairs documentation concerning the officer. The city states that some of the requested information is the subject of Open Records Letter No. 2002-2736 (2002). The city claims that portions of the remaining information are excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the representative samples of responsive information you submitted.¹

We first address your statement that some of the requested information is the subject of Open Records Letter No. 2002-2736 (2002). The city has not informed us of any change in the facts and circumstances on which that decision is based. Therefore, to the extent that Open Records Letter No. 2002-2736 (2002) is applicable to the information that is responsive to the present request, the city must withhold or release the requested information in accordance with our previous decision. *See* Open Records Decision No. 673 at 6-7 (2001) (attorney general decision constitutes first type of previous determination under Gov't Code

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

§ 552.301(a) where (1) precisely the same records or information previously were submitted under Gov't Code § 552.301(e)(1)(D), (2) same governmental body previously requested and received a ruling, (3) prior ruling concluded that same records or information are or are not excepted from disclosure, and (4) law, facts, and circumstances on which prior ruling was based have not changed).

Next, we address the city's claims with respect to the remaining requested information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. Chapter 773 of the Health and Safety Code is applicable to emergency medical services ("EMS") records. Section 773.091 provides in part:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091(a)-(b). Section 773.091 further provides, however, that

[t]he privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Id. § 773.091(g). The city asserts that some of the submitted information is confidential under section 773.091. The city has not informed us that any exception to confidentiality under section 773.092 of the Health and Safety Code is applicable to the information in question. *See id.* § 773.092. Therefore, except for the information specified by section 773.091(g), the city must withhold the information that we have marked under section 773.091 of the Health and Safety Code.

The city also seeks to withhold information that relates to a 911 call. The address and telephone number of a 911 caller may be confidential under chapter 772 of the Health and Safety Code. This chapter authorizes the development of local emergency communication

districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable only to an emergency 911 district established in accordance with chapter 772. See Open Records Decision No. 649 (1996). The originating telephone number and address of a 911 caller that is furnished by a service supplier is confidential under these sections. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

The city does not inform us of whether it is part of an emergency communication district established under one of these three sections. If the city is part of an emergency communication district established under sections 772.118, 772.218, or 772.318 of the Health and Safety Code, then the address and telephone number of a 911 caller that was furnished by a service supplier are confidential and must be withheld from disclosure under section 552.101 of the Government Code. If the city is not part of an emergency communication district established under one of these sections, then the address and telephone number of the 911 caller are not excepted from disclosure and must be released.

Section 552.101 of the Government Code also encompasses the common-law right to privacy. Information must be withheld from disclosure under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency compiles criminal history information that pertains to a particular individual, the compiled information takes on a character that implicates that individual's right to privacy in a manner that the same information in an uncompiled state does not. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); see also Open Records Decision No. 616 at 2-3 (1993). Therefore, to the extent that the submitted documents contain a compilation of information that depicts a particular individual as a criminal suspect, arrestee, or defendant, such information must be withheld from disclosure under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

Common-law privacy under section 552.101 also protects the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (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). This office has since concluded that other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has determined

to be private); *see also* Open Records Decision Nos. 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). We have marked the submitted information that the city must withhold under section 552.101 in conjunction with common-law privacy.

The city also raises section 552.108 of the Government Code. This exception 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;

(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;

(3) it is information relating to a threat against a peace officer collected or disseminated under Section 411.048 [of the Government Code]; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except [from public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to the information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). The city has not demonstrated, nor is it otherwise clear, that section 552.108 is applicable to any of the remaining requested information. Therefore, none of that information is excepted from disclosure under section 552.108.

The city raises section 552.117 of the Government Code with regard to the home address and telephone number of a city employee. Section 552.117(1) excepts from disclosure the home address, home telephone number, and social security number of a current or former employee of a governmental body, as well as information that reveals whether the individual has family members, if the current or former employee timely requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 at 5-6 (1994), 455 at 2-3 (1987). However, the city may not withhold this information in the case of a current or former employee who requested confidentiality under section 552.024 after the request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). We have marked information that is excepted from disclosure under section 552.117(1) of the Government Code if a timely election was made with regard to that information under section 552.024.

The city also raises section 552.117 with regard to personal information that relates to the former police officer. Section 552.117(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. If the former officer is still a licensed peace officer, then section 552.117(2) requires the city to withhold his current and former home

addresses and telephone numbers, his social security number, and information that reveals whether he has family members, regardless of whether he has complied with section 552.024. We have marked information that must be withheld under section 552.117(2). We note that if the former officer was no longer a licensed peace officer when the city received this request for information, then the city may withhold his section 552.117 information only if he made a timely election with regard to that information under section 552.024. We also note that section 552.117 is not applicable to information contained in a document that depicts a peace officer as a criminal suspect or the victim of a crime.

A social security number also may be excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number that appears in the submitted documents is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, nor are we aware of any law enacted on or after October 1, 1990, that authorizes the city to obtain or maintain this social security number. Therefore, we have no basis for concluding that any social security number in the submitted documents was obtained or is maintained pursuant to such a statute and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, prior to releasing a social security number, the city should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Lastly, we address the city's claim under section 552.130 of the Government Code. This exception provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1)-(2). The remaining requested information contains driver's license and license plate numbers. To the extent that these are Texas driver's license and license plate numbers, they must be withheld under section 552.130.

In summary, the requested information that is the subject of Open Records Letter No. 2002-2736 (2002) must be withheld or released in accordance with that decision. The submitted information that relates to emergency medical services is confidential under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except for the information specified by section 773.091(g). If the city is part of an emergency communication district established under sections 772.118, 772.218, or 772.318 of the Health and Safety, then the address and telephone number of a 911 caller furnished by a service supplier are excepted from disclosure under section 552.101. Criminal history information that depicts an individual as a suspect, arrestee, or defendant must be withheld under section 552.101 in conjunction with *Reporters Committee*. The information that is protected by common-law privacy also must be withheld under section 552.101. Under section 552.117(1), the city must withhold the home address and telephone number, social security number, and family member information of a current or former city employee who timely requested confidentiality for that information under section 552.024. Under section 552.117(2), the city must withhold a peace officer's home address and telephone number, social security number, and information that reveals whether the officer has family members, regardless of whether the officer complied with section 552.024. A social security number also may be excepted from disclosure under section 552.101 in conjunction with federal law. Texas driver's license and license plate numbers must be withheld from disclosure under section 552.130. The city must release the rest of the requested information.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

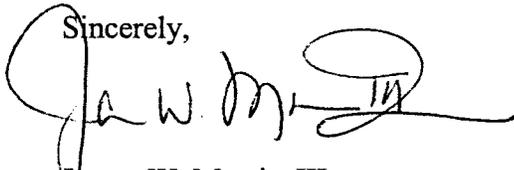
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a stylized flourish at the end.

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

JWM/sdk

Ref: ID# 163303

Enc: Marked documents

c: Mr. Rex Teter
KTVT/CBS TV
10111 N. Central Expressway
Dallas, Texas 75231
(w/o enclosures)