



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 31, 2003

Ms. J. Middlebrooks
Assistant City Attorney
City of Dallas
2014 Main Street, Room 501
Dallas, Texas 75201

OR2003-2163

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# 179162.

The Dallas Police Department (the "department") received a written request for certain records pertaining to a collision between a Dallas police car and a DART train. You contend that portions of the requested documents, a representative sample of which you submitted to this office, are excepted from required disclosure pursuant to sections 552.101, 552.108, 552.117, and 552.130 of the Government Code.¹

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) You contend that the department must withhold pursuant to section 552.101 an accident report form that was completed pursuant to chapter 550 of the Transportation Code. See Transp. Code § 550.064 (peace officer's accident report). The release of this accident report is governed by chapter 550 of the Transportation Code. Section 550.065(b) of the Transportation Code states that, except as

¹In reaching our conclusion here, we 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 No. 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.

provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the department with two of the three pieces of information. Consequently, the department must withhold the accident report in accordance with section 550.065 of the Transportation Code.

You next seek to withhold a police officer's cellular telephone number pursuant to section 552.108(b)(1) of the Government Code, which excepts from public disclosure an internal record of a law-enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." 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." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. To claim this aspect of section 552.108, however, a governmental body must meet its burden of explaining, if the requested information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

This office has previously determined that the cellular telephone numbers assigned to governmental officials and employees with specific law enforcement responsibilities are excepted from required public disclosure pursuant to section 552.108. *See* Open Records Decision No. 506 (1988) (applying predecessor statute). Accordingly, we conclude that the cellular telephone number assigned to the police officer may be withheld pursuant to section 552.108(b)(1).

One of the submitted records contains a police officer's social security number. Section 552.117(2) of the Government Code requires the withholding of, among other things, the social security number of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. *See* Open Records Decision No. 670 (2001). Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988).

Consequently, the department must withhold the officer's social security number pursuant to section 552.117(2) of the Government Code.

Finally, section 552.130(a)(1) of the Government Code requires the department to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the department must withhold all Texas driver's license numbers pursuant to section 552.130(a)(1) of the Government Code. Also, section 552.130(a)(2) of the Government Code requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." Consequently, the department must withhold all Texas license plate and vehicle identification numbers contained in the records at issue pursuant to section 552.130(a)(2).

In summary, the department must withhold 1) the "Texas Peace Officer's Accident Report" in accordance with section 552.101 of the Government Code and section 550.065 of the Transportation Code, 2) a police officer's social security number pursuant to section 552.117(2) of the Government Code, and 3) all Texas driver's license, Texas license plate numbers, and vehicle identification numbers pursuant to section 552.130 of the Government Code. The department may also withhold a police officer's cellular telephone number pursuant to section 552.108(b)(1) of the Government Code. The remaining submitted information must be released to the requestor.

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

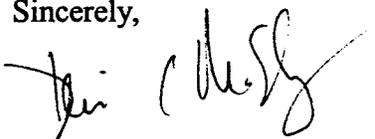
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Dep't of Pub. 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/RWP/seg

Ref: ID# 179162

Enc: Submitted documents

c: Mr. Paul Adrian
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(w/o enclosures)