



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

May 30, 2003

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar Street #300A
Dallas, Texas 75215-1801

OR2003-3676

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# 181903.

The Dallas Police Department (the "department") received a request for the arrest report pertaining to the arrest of a named individual on March 13, 2003. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested offense report relates to a pending criminal prosecution. Thus, you contend that release of the portions of the report you have marked would interfere with the detection, investigation, or prosecution of crime.

¹ 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 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.

See Houston Chronicle Publ'g Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Based on your representations and our review, we agree that release of the information you have marked under section 552.108 would interfere with the detection, investigation, or prosecution of crime. *Id.* Although section 552.108(a)(1) authorizes you to withhold the marked information from disclosure, you may choose to release all or part of the information marked under section 552.108 that is not otherwise confidential by law. *See* Gov't Code § 552.007.

Next, you have marked information that you contend is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. 540 S.W.2d at 683. The submitted offense report relates to an investigation of a sexual assault. Information identifying the complainant is confidential pursuant to common-law privacy. Thus, we have marked the identifying information in the submitted offense report that the department must withhold pursuant to section 552.101 in conjunction with common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, the remainder of the information you have marked under common-law privacy does not identify the complainant and may not be withheld pursuant to section 552.101 and common-law privacy.

You contend that a social security number contained in the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with federal law. A social security number or “related record” may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* Although you cite to section 405(c)(2)(C)(viii) of title 42 of the United States Code, you do not cite to any specific law, nor are we aware of any law, pursuant to which the social security number at issue was obtained or maintained. Therefore, we have no basis for concluding that the social security number is confidential under section 405(c)(2)(C)(viii)(I). We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of

confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, you contend that the driver's license information you have marked in the submitted report is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 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[.]

We agree that the department must withhold the marked Texas driver's license information under section 552.130.

In summary, we have marked the information the department may withhold pursuant to section 552.108(a)(1) of the Government Code.² Although section 552.108(a)(1) authorizes the department to this information from disclosure, you may choose to release all or part of the information that is not otherwise confidential by law. *See* Gov't Code § 552.007. We have marked the information in the submitted report that the department must withhold pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The social security number you have marked may be confidential under section 552.101 in conjunction with federal law. The marked Texas driver's license information must be withheld under section 552.130 of the Government Code. The remainder of the submitted report 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

²Based on this finding, we do not reach your other argument against disclosure regarding a portion of this information.

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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 181903

Enc: Submitted documents

c: Mr. David Webb
Dallas Voice
3000 Carlisle, Suite 200
Dallas, Texas 75204
(w/o enclosures)