



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 6, 2003

Ms. J. Middlebrooks  
Assistant City Attorney  
Dallas Police Department  
1400 South Lamar Street #300A  
Dallas, Texas 75215-1801

OR2003-7993

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# 190616.

The Dallas Police Department (the "department") received two requests from different requestors for (1) all calls for service, arrest, or incident reports from 1996 to the present pertaining to a specified daycare, and (2) all police reports pertaining to the death of a named individual and any report involving the investigation of the same daycare. You claim that parts 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 information.

Initially, we note that the submitted information includes an arrest warrant and affidavit. The 78th Legislature recently amended article 15.26 of the Code of Criminal Procedure to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Act of May 31, 2003, 78th Leg., R.S., ch. 390, § 1, 2003 Tex. Sess. Law Serv. 1631 (to be codified as amendment to Crim. Proc. Code art. 15.26). This provision makes the submitted arrest warrant and supporting affidavit public. The exceptions found in the Public Information Act (the "Act") do not, as a general rule, apply to information that is made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Therefore, the department must release the arrest warrant and supporting affidavit, which we have marked, to the requestor.

Next, you argue that two of the submitted offense reports are confidential by law. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information that is made confidential by statute. Section 261.201(a) of the Family Code provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We have reviewed the submitted information and find that two of the submitted offense reports relate to allegations of child abuse. Thus, these reports, which we have marked, come within the scope of section 261.201 of the Family Code. You do not inform us that the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, we conclude that these reports are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). We also note that other documents within the submitted information are confidential pursuant to section 261.201. Accordingly, the department must withhold the information we have marked from disclosure under section 552.101 of the Government Code as information made confidential by law.

You also contend that the telephone numbers and addresses of 9-1-1 callers from the submitted 9-1-1 call lists are confidential under section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health

and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *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. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 9-1-1 telephone numbers and addresses. Health & Safety Code § 772.401 et seq. You indicate that the emergency communication district here is subject to section 772.318. Therefore, we agree that the callers' telephone numbers that you have marked are excepted from public disclosure based on section 552.101 of the Government Code as information deemed confidential by statute.

We have also marked some information on the submitted call list that is confidential under section 58.007 of the Family Code. This section governs law enforcement records that relate to juvenile offenders and provides:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). We have marked an entry on the submitted call list that involves an allegation of juvenile conduct in violation of penal statutes that occurred after September 1, 1997. *See* Fam. Code § 51.02(2) (providing that in title 3 of Family Code, "child" means person who is ten years of age or older and under seventeen years of age). Thus, this information is subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, this information is confidential in its entirety in accordance

with section 58.007(c) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code.

Next, we note that a social security number contained within the submitted information may be confidential. A social security number may be withheld in some circumstances 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.* We have no basis for concluding that the social security number is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act (the "Act") on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, you should ensure that it was not obtained and is not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Next, you argue that portions of the submitted information are excepted under section 552.108 of the Government Code. Section 552.108(a)(1) 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." Generally, 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* 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 service #0450926-M is a pending theft investigation. Based upon this representation, we conclude that release of this offense report 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), *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). Thus, section 552.108(a)(1) is applicable to the marked information.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. The department explains that portions of the submitted information relate to investigations that did not result in a conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to the marked information.

We note, however, that section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177, which includes the complainant's name. Thus, with the exception of the basic front page offense and arrest information, you may withhold the offense reports we have marked based on section 552.108(a). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

Finally, you contend that certain information, which you have marked, is excepted under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Thus, the department must withhold the information you have marked, as well as the additional information we have marked, under section 552.130.

To summarize, we conclude: (1) the department must release the arrest warrant and supporting affidavit, (2) the department must withhold the information we have marked under section 552.101 in conjunction with section 261.201 of the Family Code, (3) except for basic information as described in *Houston Chronicle*, which must be released, the department may withhold the marked information under section 552.108 of the Government Code, (4) the callers' telephone numbers that you have marked are excepted from public disclosure based on section 552.101 in conjunction with section 772.318 of the Health and Safety Code, (4) the department must withhold the information we have marked under section 552.101 in conjunction with section 58.007 of the Family Code, (5) the department must withhold the information you have marked under section 552.130 of the Government Code, and (6) prior to releasing the social security number, you should ensure that it was not obtained and is not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. The remaining information must be released.

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,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 190616

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