



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2006

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
1400 South Lamar
Dallas, Texas 75215

OR2006-07473

Dear Ms. Middlebrooks:

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# 253814.

The Dallas Police Department (the "department") received a request for all police reports and 911 calls pertaining to a specified street address for a specified time period. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We note that while you also raise sections 552.103, 552.117, 552.1175, 552.127, and 552.137 of the Government Code, you have provided no comments explaining why these exceptions are applicable and you have not marked any portion of the submitted documents to indicate information that you claim is so excepted. We therefore presume the department no longer intends to claim these exceptions to disclosure. *See* Gov't Code § 552.301(e)(1)(A).

²We 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.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes. 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 772.318 applies to an emergency communication district for a county with a population of more than 20,000. We understand you to assert that the emergency communication district here is subject to section 772.318. Therefore, the originating telephone numbers and addresses of the 9-1-1 callers in the submitted information are confidential under section 772.318 of the Health and Safety Code, and the department must withhold this information under section 552.101 of the Government Code.

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007(c) reads as follows:

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). The submitted documents contain information that involves juvenile conduct occurring after September 1, 1997. However, the documents at issue do not name a specific juvenile suspect. Section 58.007 does not apply when a juvenile offender is not named. Therefore, this information is not confidential under section 58.007 and may not be withheld from disclosure pursuant to section 552.101 of the Government Code on that basis.

Section 552.101 also 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. *Id.* at 683. The common law right to privacy also encompasses some kinds of medical information or information indicating disabilities or specific illnesses. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the information that must be withheld by the department under section 552.101 based on common law privacy. The remaining information is not confidential under common law privacy, and none may be withheld under section 552.101 on this basis.

You claim that the information you have marked is excepted from disclosure 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.” 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), 552.301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information you have marked relates to a pending criminal investigation and prosecution. We therefore agree that section 552.108(a)(1) is applicable to the information you have marked. 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes a “detailed description of the offense.” See *Houston Chronicle*, 531 S.W.2d at 187; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note that you have marked the entire narrative portion of the submitted incident report as information you seek to withhold under section 552.108. The remaining portions of the incident report do not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released. Accordingly, we determine that the department must release a sufficient portion of the narrative section of the incident report to encompass a detailed description of the offense, to satisfy the required release of basic information pursuant to *Houston Chronicle*. The department may withhold the remaining information at issue under section 552.108(a)(1). We note that the department has the discretion to release all or part of this information that is not otherwise confidential by law. Gov’t Code § 552.007.

You claim that some of the submitted is excepted from disclosure under section 552.130 of the Government Code. This section excepts from disclosure information that relates to a Texas driver's license or motor vehicle title or registration. Gov't Code § 552.130. Thus, we agree that you must withhold the Texas motor vehicle record information you have marked under section 552.130.

Lastly, the submitted information contains credit card numbers. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136. The department must, therefore, withhold the marked credit card numbers under section 552.136.

In summary, the department must withhold the originating telephone numbers and addresses of the 9-1-1 callers in the submitted information under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. The department must withhold the information we have marked under section 552.101 on the basis of common law privacy. Other than a sufficient portion of the narrative section of the incident report to constitute a detailed description of the offense, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must also withhold the information it has marked under sections 552.130 and 552.136 of the Government Code. The department must release the remaining information 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/eb

Ref: ID# 253814

Enc. Submitted documents

c: Francis A. Carter
8704 Forest Green
Dallas, Texas 75243
(w/o enclosures)