



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2007

Ms. Katherine Powers
Assistant City Attorney
Criminal Law and Police Division
1400 South Lamar
Dallas, Texas 75215

OR2007-05975

Dear Ms. Powers:

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 #278531.

The Dallas Police Department (the "department") received a request for (1) a specified police report and (2) a list of all incidents having occurred at a specified address during the last twenty-four months. You claim that the submitted information is 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, a portion of which constitutes a representative sample.¹

Initially, we note that you have submitted information pertaining to incidents which did not occur at the specified address. This information, which we have marked, is not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release this information in response to this request.

You claim that the submitted offense report is excepted from disclosure under section 552.108(a) of the Government Code. Section 552.108(a) 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." Gov't Code § 552.108(a)(1).

¹We 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.

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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue relates to a pending criminal investigation. Based upon this representation, we conclude that the release of this information 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 is applicable to this information.

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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 185. Thus, with the exception of basic information, the department may withhold the offense report you have marked under section 552.108(a)(1) of the Government Code.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, including chapter 772 of the Health and Safety Code, which 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, we agree that the originating telephone numbers of the 9-1-1 callers in the submitted call sheet, which you have marked, 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 common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) 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 department must withhold

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim that a portion of the call sheet is excepted from disclosure under section 552.108(b) of the Government Code. Section 552.108(b)(1) excepts from disclosure “[a]n 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... if... release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.--Austin 2002, no pet.) (section 552.108(b)(1) protects information which, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). You state that the information you have marked under section 552.108(b)(1) consists of “security gate code” information for a particular apartment complex. You advise that this information was provided to law enforcement personnel for use in law enforcement situations and emergencies but is not readily available to the public, and that release of the gate code information would compromise the security of the apartment complex. Based on your representations, we conclude that you may withhold the marked gate code information under section 552.108(b)(1).

In summary, except for basic information, the department may withhold the report it has marked under section 552.108(a)(1) of the Government Code. The department must withhold the 9-1-1 caller information it has marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Texas Health and Safety Code. The department must withhold the information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. Finally, the department may withhold the information it has marked under section 552.108(b)(1) of the Government Code. 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, 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/jb

Ref: ID# 278531

Enc. Submitted documents

c: Ms. Renee Sasser
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(w/o enclosures)