



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 24, 2008

Ms. Sylvia McClellan  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2008-08558

Dear Ms. McClellan:

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# 314030.

The Dallas Police Department (the "department") received a request for all 9-1-1 call records and offense reports for eight specified locations from January 1, 2000 through the date of the request. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted sample of information.<sup>1</sup>

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. Section 552.101 encompasses information protected by other statutes, such as section 772.318 of the Health and Safety Code. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000 and makes

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<sup>1</sup>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.

confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). You indicate that the department is within an emergency communication district that was established under section 772.318, and that the 9-1-1 callers' telephone numbers were provided by a 9-1-1 service provider. Thus, based on your representations and our review, we determine that the telephone numbers you have marked are confidential pursuant to section 772.318 of the Health and Safety Code and must be withheld 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. The relevant language of section 58.007(c) reads as follows:

(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). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. You assert that incident report number 0427431-P pertains to a juvenile engaged in delinquent conduct that occurred after September 1, 1997. However, this report does not involve an identified juvenile as a suspect or offender. Therefore, we conclude that incident report number 0427431-P is not confidential under section 58.007 and may not be withheld from disclosure on that basis.

Section 552.101 encompasses common-law privacy, which protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Indust. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of the test must be satisfied. *Id.* at 681-82. The types 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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Additionally, this office has found that a compilation of an individual's criminal history record information is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Accordingly, except as we have marked otherwise, the department must withhold the information you have marked and the additional information we have marked under section 552.101 in conjunction with common-law privacy.

The department asserts that some of the remaining information is excepted from disclosure under section 552.108 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). 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that portions of the submitted information relate to pending criminal investigations and prosecutions. Based upon this representation, we conclude that you have established 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(a)(1) is applicable to the information you have marked.

However, section 552.108 does not except 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* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the

exception of basic information, which must be released, you may withhold the information you have marked under section 552.108(a)(1) of the Government Code.<sup>2</sup>

Section 552.130 of the Government Code provides that information relating to a driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a). We note that section 552.130 does not apply to out-of-state motor vehicle record information. Accordingly, the department must withhold the Texas motor vehicle record information you have marked under section 552.130, except as we have marked for release.

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." Gov't Code § 552.136. Accordingly, the department must withhold the credit card and account numbers you have marked under section 552.136 of the Government Code.

Section 552.147 of the Government Code provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act.<sup>3</sup> Therefore, the department may withhold the social security numbers you have marked under section 552.147 of the Government Code.

In summary, the department must withhold under section 552.101 of the Government Code (1) the information you have marked under section 772.318 of the Health and Safety Code and (2) the information you have marked and the additional information we have marked under common-law privacy, except as we have marked otherwise. The department must withhold the information you have marked under sections 552.130 and 552.136 of the Government Code. The department may withhold the marked social security numbers under section 552.147 of the Government Code. With the exception of basic information, the department may withhold the information it marked under section 552.108(a)(1). The remaining 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

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

<sup>3</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Henisha D. Anderson  
Assistant Attorney General  
Open Records Division

HDA/mcf

Ref: ID# 314030

Enc. Submitted documents

c: Ms. Linda Schneider  
Cowles & Thompson  
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(w/o enclosures)