



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2009

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

OR2009-00930

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# 332877 (DPD Request # 2008-7620).

The Dallas Police Department (the "department") received a request for all reports regarding a specific address from November 15, 2007 to March 31, 2008. You claim that portions of the requested 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 representative sample of information.¹

Initially, we note some of the entries on the submitted calls for service reports do not pertain to the address specified in the request. Thus, this information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

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.

We also note a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-15874 (2008). In this ruling, we concluded that, with the exception of basic information, the department may withhold report numbers 0083237-V and 0083519-V under section 552.108 of the Government Code. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, we conclude the department may continue to rely on Open Records Letter No. 2008-15874 as a previous determination and withhold or release report numbers 0083237-V and 0083519-V in accordance with this ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will address the submitted arguments.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(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). You assert that report numbers 0762808-T, 0006001-V, and 0062321-V are confidential under section 58.007 of the Family Code. Upon review, we agree that incident report numbers 0006001-V and 0062321-V involve juveniles engaged in delinquent conduct or conduct indicating a need for supervision after September 1, 1997. *See id.* §§ 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007 of the Family Code), 51.02(2) (defining "child"

as a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct). You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to these reports. Therefore, based on your representations and our review, we find that incident report numbers 0006001-V and 0062321-V, which we have marked, are confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. However, report number 0762808-T does not specifically identify a juvenile engaged in delinquent conduct or conduct indicating a need for supervision for purposes of section 58.007(c). Therefore, we find you have failed to demonstrate that this report is a juvenile law enforcement record; thus, it may not be withheld under section 552.101 in conjunction with section 58.007 of the Family Code.

Next, you claim the submitted CRB-3 officer's accident reports are confidential under chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 552.101 also encompasses section 550.065(b) of the Transportation Code, which states except as provided by subsection (c), accident reports are privileged and confidential. *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has not provided the department with two of the three items of information specified by section 550.065(c)(4). Therefore, the department must withhold the submitted CRB-3 accident reports, which we have marked, pursuant to section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. 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. A compilation of an individual's criminal history 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Therefore, the

department must withhold the information we have marked in the submitted call for service report, report number 0741087-T, and report number 0066082-V under section 552.101 in conjunction with common-law privacy.

You argue that some of the remaining incident reports 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[.]” 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 0742586-T, 0762358-T, and 0729031-T pertain to pending criminal investigations or prosecutions. Based upon this representation and our review, we conclude that release of these reports 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 report numbers 0742586-T, 0762358-T, and 0729031-T.

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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See Open Records Decision No. 127 at 3-4 (1976)* (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold incident report numbers 0742586-T, 0762358-T, and 0729031-T pursuant to section 552.108(a)(1) of the Government Code.²

Section 552.136 provides 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. An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *Id.* § 552.136(a). We note that while your brief asserts the submitted information includes employee identification numbers, we are unable to identify any identification numbers of this type within the remaining information. Accordingly, you may not withhold any of the remaining information under section 552.136 of the Government Code.

²As our ruling under section 552.108 is dispositive, we need not address your remaining arguments against disclosure of this information.

Finally, you raise section 552.147 of the Government Code for some of the remaining information. Section 552.147 provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. We agree that the department may withhold the social security number that you have marked under section 552.147 of the Government Code.³

In summary, the department may continue to rely on Open Records Letter No. 2008-15874 for any portion of the requested information that is identical to the information previously requested and ruled upon by this office. In conjunction with section 552.101, the department must withhold: (1) incident report numbers 0006001-V and 0062321-V under section 58.007(c) of the Family Code, (2) the submitted accident reports pursuant to section 550.065(b) of the Transportation Code, and (3) the information we have marked in report numbers 0741087-T and 0066082-V under common-law privacy. With the exception of basic information, the department may withhold incident report numbers 0742586-T, 0762358-T, and 0729031-T pursuant to section 552.108(a)(1) of the Government Code. The department may withhold the marked social security number pursuant to section 552.147 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/cc

³Section 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.

Ref: ID# 332877

Enc. Submitted documents

cc: Requestor
(w/o enclosures)