



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2009

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
1400 South Lamar
Dallas, Texas 72515

OR2009-07668

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# 344887 (DPD ID# 09-2072).

The Dallas Police Department (the "department") received a request for public integrity, internal affairs, and personnel records for a named police officer. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ Initially, we note that you have redacted Texas motor vehicle record information. Pursuant to section 552.301 of the Government Code, a governmental body is prohibited from withholding information from a requestor without seeking a ruling from this office unless a statute authorizes such, or the governmental body has received a previous determination for the information at issue. *See* Gov't Code § 552.301(a); *see also* Open Records Decision No. 673 (2000) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301 of the Government Code). We are not aware

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.

of any law that authorizes the department to withhold Texas motor vehicle record information without requesting a decision from this office. Further, you do not assert, nor does our review of our records indicate, that the department has been issued a previous determination authorizing it to withhold this information without seeking a ruling from this office. Because we are able in this instance to ascertain the nature of the information that you have redacted, we will address whether you may withhold this information. In the future, however, the department should refrain from redacting any information that it submits to this office in seeking an open records ruling, unless the information at issue is subject to a previous determination issued by this office. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302. *See id.* §§ 552.301(e)(1)(D), .302

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 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. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes 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). We understand the City of Dallas to be part of an emergency communication district that was established under section 772.318 and that the telephone number and address you have marked within the submitted call report were provided by a service provider. Thus, based on your representations and our review, we determine that the 9-1-1 caller's telephone number and address are confidential under 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 159.002 of the MPA, which provides in part the following:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the portions of the

submitted information that constitute medical records and that may only be released in accordance with the MPA.

Section 552.101 also encompasses section 773.091 of the Health and Safety Code, which governs the emergency medical service ("EMS") records. Section 773.091 provides in part the following:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Thus, except for the information specified in section 773.091(g), EMS records are deemed confidential under section 773.091 and, therefore, may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-773.094. EMS records may be released to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf." *Id.* § 773.092(e)(4). The consent must be in writing, signed by the patient, authorized representative, or personal representative, and specify (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. Health & Safety Code § 773.093(a). Thus, except as specified by section 773.091(g), the department must withhold the marked EMS information under section 773.091, unless the requestor provides the department with written consent that meets the requirements of section 773.093(a). *Id.* §§ 773.092, .093; Open Records Decision No. 632 (1995).

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. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). You assert the information you have marked is a juvenile law enforcement record subject to section 58.007 of the Family Code. We find that the marked information consists of records of an administrative investigation, rather than juvenile law enforcement records. We

therefore conclude the information you have marked is not confidential under section 58.007 and may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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). This office has also found common-law privacy applies to the identifying information of juvenile offenders. *See* Open Records Decision No. 384 (1983); *cf.* Fam. Code § 58.007. Upon review, we conclude that the department must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You represent that the pager and cellular telephone numbers you have marked on the submitted information belong to police officers, and claim they are excepted from required public disclosure under section 552.108 of the Government Code. Section 552.108(b)(1) of the Government Code excepts from required public 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). To claim this exception, a governmental body must explain how and why release of the requested information would interfere with law enforcement and crime prevention. Gov’t Code §§ 552.108(b)(1), .301; Open Records Decision No. 562 at 10 (1990); Open Records Decision No. 409 at 2 (1984). Section 552.108(b) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin, 2002, no pet.). You state that the officers’ pagers and cellular telephones are used by the officers in the field to carry out their law enforcement responsibilities. You assert that the release of this information would interfere with law enforcement and crime prevention. Therefore, based upon your representations and our review of the submitted information, we find that the department may withhold the pager and cellular telephone numbers you have marked under section 552.108(b)(1) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information regarding a peace officer regardless of whether the officer elected under

section 552.024 or 552.1175 of the Government Code to keep such information confidential.² Home address information relating to two police officers, which we have marked, must be withheld under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a driver's license or license plate issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). Pursuant to section 552.130 of the Government Code, you must withhold the motor vehicle information we have marked.

Section 552.136 of the Government Code provides that "[n]otwithstanding any other provision of [the Act], 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(b); *see id.* § 552.136(a) (defining "access device"). You inform us that the employee identification numbers you have marked are used in conjunction with one additional digit in order to access city credit union accounts. The department must withhold these identification numbers under section 552.136. We have marked an additional employee identification number that must be withheld pursuant to section 552.136 of the Government Code.

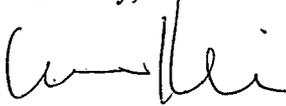
In summary, the 9-1-1 caller's telephone number and address you have marked must be withheld pursuant to section 552.101 of the Government Code in conjunction with 772.318 of the Health and Safety Code. The medical records we have marked may only be released in accordance with the MPA. The department must withhold the EMS records we have marked under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), unless the department receives the required written consent for release under section 773.093. The information we have marked must be withheld pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The pager and cellular telephone numbers you have marked may be withheld pursuant to section 552.108(b)(1) of the Government Code. The marked home addresses of department police officers must be withheld pursuant to section 552.117(a)(2) of the Government Code. The marked Texas motor vehicle record information must be withheld pursuant to section 552.130 of the Government Code. The marked employee identification numbers must be withheld pursuant to section 552.136 of the Government Code. The remaining submitted 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.

²"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jb

Ref: ID# 344887

Enc. Submitted documents

c: Requestor
(w/o enclosures)