



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2009

Ms. J. Middlebrooks
Assistant City Attorney
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2009-08524

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# 346492 (Public Information Request 09-2620).

The Dallas Police Department (the "department") received a request for the internal affairs report of a named officer pertaining to a specified arrest. 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 information.¹

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 protected by other statutes such as section 550.065 of the Transportation Code. The submitted information includes an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states except as provided by subsection (c), accident reports are

¹We assume 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.

privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) 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 pieces of information specified by the statute.² *Id.* In this instance, the requestor has not provided the department with at least two of the three items of information specified by section 550.065(c)(4). Therefore, the department must withhold the submitted accident report we have marked pursuant to section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code. Chapter 772 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)*. You indicate the department is within an emergency communication district that is subject to section 772.318. You claim that the 9-1-1 caller's originating telephone number and address you have marked in the submitted 9-1-1 call sheets are confidential under section 772.318 of the Health and Safety Code. To the extent the telephone number and address you have marked were furnished by a 9-1-1 service supplier, we agree the department must withhold this information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 also encompasses section 773.091 of the Health and Safety Code, which provides in relevant part:

(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.

²Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091 and may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. We understand you to claim the Patient Care Report you have marked as EMS records are maintained by the department and reflect the treatment of a patient by EMS personnel. Based on your representation and our review, we agree the submitted Patient Care Report constitutes an EMS record that is subject to chapter 773 of the Health and Safety Code. Except for the information specified by section 773.091(g), this record must be withheld under section 552.101 of the Government Code in conjunction with 773.091 of the Health and Safety Code, unless the department receives the required written consent for release under sections 773.092 and 773.093.

Section 552.101 also encompasses Chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See id.* §§ 560.001 (defining “biometric identifier” to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You inform us that the individual whose information is at issue did not consent to disclosure. Therefore, the department must withhold the biometric information you have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code 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). 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. In addition, 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). Upon review, we find that, although portions of the submitted information could be considered highly intimate or embarrassing, the information at issue is of legitimate public interest in this instance. Thus, the department may not withhold any of the information at issue under section 552.101 in conjunction with common-law privacy.

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). Generally, a governmental body

claiming section 552.108(a)(1) 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). Section 552.108 is generally not applicable to records of an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (addressing statutory predecessor to Gov't Code § 552.108). You state, however, that the information you have marked pertains to a pending criminal prosecution. You also inform us the Dallas District Attorney's Office states the release of this information could jeopardize the pending prosecution. Based on your representations and our review, we conclude the release of the information you have marked 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.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Accordingly, we agree the department may withhold the information you have marked under section 552.108(a)(1).

Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the department must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(2) of the Government Code.

Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). Therefore, the department must withhold the Texas motor vehicle information you have marked, as well as the additional information we have marked, under section 552.130.

Section 552.136(b) states "[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). You inform us an employee's identification number is also used as an employee's credit union bank account number. Thus, the department must withhold the information you have marked under section 552.136 of the Government Code.

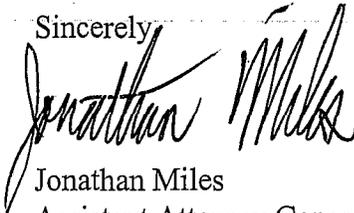
In summary, the department must withhold the accident report form under section 552.101 in conjunction with section 550.065 of the Transportation Code. To the extent the information you have marked was furnished by a 9-1-1 service supplier, the department must withhold this information under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Except for the information specified by section 773.091(g), the

department must withhold the EMS record you marked under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, unless the department receives the required written consent for release under sections 773.092 and 773.093. The department must withhold the biometric information you have marked under section 552.101 in conjunction with section 560.003 of the Government Code. The department may withhold the information you have marked under section 552.108(a)(1). The department must withhold the information you have marked and the additional information we have marked under section 552.117(a)(2), the marked Texas motor vehicle information under section 552.130, and the marked access device numbers under section 552.136. 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 346492

Enc: Submitted documents

c: Requestor
(w/o enclosures)