



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 22, 2009

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

OR2009-10198

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# 349717.

The Dallas Police Department (the "department") received two requests from different requestors for information pertaining to a named officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we will address your claim under section 552.108(a)(2) of the Government Code for Part A, as it is potentially the most encompassing exception. Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code. § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Part A relates to a concluded case that did not result in a conviction or deferred adjudication. Based on your representations, we conclude section 552.108(a)(2) is applicable to Part A.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold Part A pursuant to section 552.108(a)(2) of the Government Code.

We will now address the exceptions to disclosure you raise for Part B. 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 the doctrine of common-law privacy. Common-law privacy 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 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. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We note this office has concluded that public disclosure of an individual's name, home address, and telephone number is not an invasion of privacy. *See* Open Records Decision Nos. 554 at 3 (1990); *see also* Open Records Decision No. 455 at 7 (1987) (home addresses and telephone numbers are generally not protected under the Act's privacy exceptions).

Upon review, we find that the information we have marked, as well as the information we have indicated on the submitted compact disc, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked and indicated pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information you have marked, including information available to the public on the internet, is of legitimate public interest or is not highly intimate or embarrassing. Therefore, the department may not withhold any portion of the remaining information it has marked under section 552.101 in conjunction with common-law privacy.

Section 552.108(b)(1) of the Government Code excepts from required public disclosure an internal record of a law enforcement agency 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). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law

enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); *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 that, 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); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). In Open Records Decision No. 506 (1988), this office determined the statutory predecessor to section 552.108(b) excepted from disclosure “cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities.” Open Records Decision No. 506 at 2 (1988). We noted the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and public access to these numbers could interfere with that purpose. *Id.*

You inform us the cellular telephone numbers you have marked in Part B are used by department officers in the field to carry out their law enforcement duties. You assert the release of these cellular telephone numbers would interfere with law enforcement by preventing the officers from taking care of their immediate needs in the field. Based on your representations, we conclude that, to the extent the cellular telephone numbers you have marked are assigned to department officers to be used for law enforcement purposes, the department may withhold the marked numbers under section 552.108(b)(1) of the Government Code.

Section 552.117(a)(2) of the Government Code 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. We note that some of the information you have marked under section 552.117(a)(2) does not consist of the personal information of an officer. Thus, this information, which we have marked for release, may not be withheld under section 552.117. However, the remaining information you have marked, the additional information we have marked, and the information we have indicated on the submitted compact disc, must be withheld under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code 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). We note that a portion of the information you have marked does not consist of Texas motor vehicle record information, and may not be withheld under section 552.130. Therefore, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

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). We understand 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, as well as the information we have marked, under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c) of the Government Code. In addition, you have not informed this office that the department has received consent for the release of the e-mail addresses at issue. Therefore, the department must withhold the e-mail addresses you have marked, as well as the e-mail addresses we have marked, under section 552.137 of the Government Code.

Finally, we note the remaining information in Part B contains a permanent resident card. Section 552.101 also encompasses section 1304(b) of title 8 of the United States Code, which addresses the confidentiality of the registration of aliens under section 1301 of the United States Code and provides:

All registration and fingerprint records made under the provisions of this subchapter shall be confidential, and shall be made available only

(1) pursuant to section 1357(f)(2) of this title, and

(2) to such persons or agencies as may be designated by the [United States] Attorney General.

8 U.S.C. § 1304(b). The permanent resident card we have marked is subject to section 1304(b). *See* 8 C.F.R. § 264.1(a) (providing detailed list of prescribed registration forms). Therefore, the marked permanent resident card must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 1304(b) of title 8 of the United States Code.

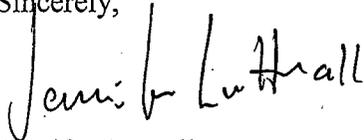
In summary, with the exception of basic information, the department may withhold Part A pursuant to section 552.108(a)(2) of the Government Code. The department must withhold the information we have marked, and the information indicated on the submitted compact disc, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the cellular telephone numbers you have marked are assigned to department officers to be used for law enforcement purposes, the department may withhold the marked numbers under section 552.108(b)(1) of the Government Code. With the exception of the information we have marked for release, the marked information and the information indicated on the submitted compact disc must be withheld under

section 552.117(a)(2) of the Government Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The department must withhold the information you have marked, as well as the information we have marked, under sections 552.136 and 552.137 of the Government Code. The marked permanent resident card must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 1304(b) of title 8 of the United States 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 349717

Enc. Submitted documents

c: Requestors
(w/o enclosures)