



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2009

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

OR2009-10721

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# 350827 (DPD Request #: 09-3958).

The Dallas Police Department (the "department") received a request for: (1) specific memos, e-mails, or other documentation pertaining to a named department officer for a specified time period and (2) particular written requests made by the department officer. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You contend that the submitted information contains the cellular telephone number of a police officer that is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(b)(1) 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

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.

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 (1998), this office concluded that cellular phone numbers for individuals with specific law enforcement responsibilities may be withheld under section 552.108. ORD 506 at 2. We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.*

You inform us that the cellular telephone number at issue is used by a department officer in the field to carry out his law enforcement responsibilities. You assert that the release of the cellular telephone number at issue would interfere with law enforcement. Based on your representations and our review, we conclude that the department may withhold the cellular telephone number you have marked under section 552.108(b)(1) of the Government Code.

You raise section 552.117 of the Government Code for portions of the remaining information. 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. Accordingly, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

You also claim that some of the remaining information is excepted from disclosure under section 552.136 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). 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.

Finally, you raise section 552.101 of the Government Code for portions of the remaining information. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (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. Upon review, although some of the remaining information would generally be confidential under common-law privacy, we note that this information pertains to an individual who is not identified in the remaining information. Thus, the information at issue is not protected by common-law privacy, and no portion of it may be withheld under section 552.101 of the Government Code.

In summary, the department may withhold the marked cellular telephone number under section 552.108(b)(1) of the Government Code. The department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The department must withhold the marked information under section 552.136 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/rl

Ref: ID# 350827

Enc. Submitted documents

cc: Requestor
(w/o enclosures)