



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2009

Mr. Samuel D. Hawk
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2009-11890

Dear Mr. Hawk:

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# 353236 (Request No. 2009-4553).

The Dallas Police Department (the "department") received a request for certain specified service numbers, to include information pertaining to an incident involving the requestor. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that a portion of the requested information, records regarding service number 0108902-W, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-07650 (2009). In that ruling, we concluded that, in accordance with section 552.108(a)(1), the department may withhold the information marked as "552.108." We also agreed the department must withhold the marked Texas motor vehicle information in accordance with section 552.130 of the Government Code, and that the department may withhold the social security number(s) under section 552.147 of the Government Code. With regard to the requested information that is identical to the information previously ruled upon by this office, we conclude, as we have no indication that the law, facts, and circumstances on which the prior rulings were based have changed, the department may continue to rely on Open Records Letter No. 2009-07650 as a previous determination and withhold or release the identical information in accordance

with that ruling.¹ 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). We will next address your arguments for the submitted information.

You acknowledge, and we agree, that the department failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. See Open Records Decision No. 150 at 2 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. See Gov't Code § 552.007; Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Although you state release of the submitted information would hinder the Dallas County District Attorney's Office ("district attorney") in its efforts to prosecute the matter, you have not provided a representation from the district attorney that it asserts an interest in the submitted information and wants it to be withheld under section 552.108. Accordingly, the department may not withhold the submitted information under section 552.108 of the Government Code. We note, however, that the application of section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness. Accordingly, we will address the applicability of section 552.101 to the submitted information.

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 § 552.101.² 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

¹To the extent the submitted DVD containing video from "vehicle 6215", which you have labeled "case # 108902W", was at issue in our previous ruling, the department may continue to rely on Open Records Letter No. 2009-07650 with regard to the video. To the extent this video was not at issue in our previous ruling, it is subject to release in accordance with the remainder of this ruling.

²The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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 some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under 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 the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the marked information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no other exceptions to disclosure of the remaining submitted information, it must be released to the requestor.³

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/cc

³ We note that the information to be released contains information that would be confidential with regard to the general public, but to which the requestor has a right of access under section 552.023 of the Government Code. Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a). Should the department receive another request for this information from someone other than the requestor or his authorized representative, the department should again seek a decision from this office.

Ref: ID# 353236

Enc. Submitted documents

cc: Requestor
(w/o enclosures)