



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 24, 2009

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

OR2009-16715

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# 362545 (DPD PIR # 09-7255).

The Dallas Police Department (the "department") received a request for internal affairs file number 09-112. You claim some of the requested information is 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

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 information that other statutes make confidential. Chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See*

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.

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 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the department must withhold the 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. 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. 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 also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision Nos. 545 (1990). Upon review, we agree that the personal financial information you have marked is both highly intimate or embarrassing and not of legitimate public concern. Thus, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, you raise section 552.108(a)(4) of the Government Code for portions of the remaining information, which provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [is excepted from required public disclosure] if:

...

(4) it is information that:

(a) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(b) reflects the mental impressions or legal reasoning of an attorney representing the state[.]

Gov't Code § 552.108(a)(4). Section 552.108(a)(4) is applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state. In this instance, you inform us that a portion of the submitted information was prepared by the Dallas County District Attorney's office. You state that this information was prepared by an attorney representing the state in anticipation of litigation or in the course of preparing for litigation and that this information reflects the attorney's mental impressions and legal reasoning. Based on your representations and our review, we conclude that section 552.108(a)(4) is applicable to the information at issue, and the department may withhold this information on that basis.

Next, you raise section 552.108(b)(1) of the Government Code for some of the remaining information. 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." *Id.* § 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 that 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." *Id.* 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 remaining submitted information contains the cellular telephone numbers of department officers. You assert that the release of these cellular telephone numbers would interfere with law enforcement and crime prevention. Based on your representations and our review of the information at issue, we conclude that the department may withhold the submitted cellular telephone numbers of department officers under section 552.108(b)(1) of the Government Code.

Next, we address your argument that some of the remaining information is excepted from disclosure under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). We note that section 552.117 also encompasses personal cellular telephone numbers, provided that the cellular telephone service is not paid for by a governmental body. *See* Open Records

Decision No. 670 at 6 (2001). Accordingly, if the remaining submitted information contains the home or personal cellular telephone numbers of department officers, then the department must withhold this information 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 motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the Texas motor vehicle record information you have marked, and the additional information we have marked, pursuant to section 552.130 of the Government Code.

Finally, section 552.136(b) of the Government Code states 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). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). You state that an employee's identification number is the same number used for the City of Dallas credit union bank accounts. Therefore, the department must withhold the insurance policy numbers and employee identification numbers you have marked pursuant to section 552.136 of the Government Code.

In summary, the department must withhold the fingerprint information you have marked under section 552.101 in conjunction with section 560.003 of the Government Code and the personal financial information you have marked under section 552.101 in conjunction with common-law privacy. The department may withhold the information you have marked pursuant to section 552.108(a)(4) of the Government Code. The department also may withhold the submitted cellular telephone numbers belonging to department officers pursuant to section 552.108(b)(1) of the Government Code. If the submitted information contains the home or personal cellular telephone number of department officers, the department must withhold this information under section 552.117(a)(2) of the Government Code. The department must withhold the information you have marked, and the additional information we have marked, pursuant to section 552.130 of the Government Code. The department must withhold the information you have marked pursuant to section 552.136 of the Government Code. The remaining information must be released to the requestor.²

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.

²We note that the remaining submitted information contains a social security number that does not pertain to a department officer. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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, toll free, at (888) 672-6787.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 362545

Enc. Submitted documents

cc: Requestor
(w/o enclosures)