



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 9, 2010

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

OR2010-05013

Dear Ms. McClellan:

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# 376982 (DPD ORR 2010-01113).

The Dallas Police Department (the "department") received a request for any department files for calls for service, 911 call service sheets, and any police reports for homicide/murder for a specified address for a specified time period. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Gov't Code § 552.101.

¹Although you raise 42 U.S.C. § 405(c)(2)(C)(viii)(I) to withhold social security numbers, we note that the proper exception to raise for this information is section 552.147 of the Government Code.

²We 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.

Section 552.101 of the Government Code encompasses section 58.007 of the Family Code, which provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct in need of supervision, that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of the Family Code). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Upon review, we find that the information we have marked involves allegations of juveniles engaged in delinquent conduct or conduct indicating a need for supervision occurring after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 of the Family Code apply to this information. Thus, the information we have marked is subject to section 58.007(c) and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which relates to local emergency communications districts. You have marked telephone numbers in the remaining information that you seek to withhold under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772, 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)*. We understand the City of Dallas to be part of an emergency communication district that was established under

section 772.318.³ Provided that the information you have marked consists of originating telephone numbers that were furnished by a 9-1-1 service supplier, we agree that the department must withhold the marked telephone numbers under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.

You claim some of the remaining information is protected by common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To establish the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. The types of information considered intimate or 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 Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). You claim specified portions of the remaining information are protected by common-law privacy. Upon review, we find the information we have marked in the remaining information is considered highly intimate or embarrassing and not of legitimate public concern. Thus, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. You have failed to demonstrate how the remaining information you seek to withhold is highly intimate or embarrassing information pertaining to an identified individual. Consequently, that information may not be withheld under common-law privacy.

You raise section 552.108 of the Government Code for portions of the remaining information. Section 552.108 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). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the report you have marked pertains to a pending case or cases. You state that release of this report could hinder the criminal investigation and/or prosecution. Based on

³Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

your representation and our review, we conclude that section 552.108(a)(1) is applicable to the report you have marked. *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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note that section 552.108 is limited by section 552.108(c), which provides that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes, among other things, an identification and description of the complainant, a detailed description of the offense, and any property involved. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the department may withhold the report you have marked under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). Upon review, the department must withhold the information you have marked, as well as the additional Texas motor vehicle record information we have marked, in the remaining information under section 552.130 of the Government Code.⁴

You claim the remaining information contains social security numbers excepted from disclosure under section 552.147 of the Government Code. Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.⁵ Gov't Code § 552.147(a). Upon review, we find that the remaining information does not contain any social security numbers. Therefore, the department may not withhold any of the remaining information under section 552.147.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold the telephone numbers you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if they were furnished by a 9-1-1 service supplier. The department must

⁴We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁵We note that 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.

withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold the report you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the Texas motor vehicle record information you have marked and we have marked under section 552.130 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, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dls

Ref: ID# 376982

Enc. Submitted documents

c: Requestor
(w/o enclosures)