



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 15, 2010

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

OR2010-17287

Dear Ms. McClennan:

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# 399958 (DPD Request Number: 2010-7913).

The Dallas Police Department (the "department") received a request for several categories of information pertaining to a specified address for a specified time period. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information does not pertain to the address specified in the request. This information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Next, we must address the department's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See Gov't Code § 552.301(b)*. The department states it received the request for information on August 26, 2010. Accordingly, the department's ten-business-day deadline was

September 10, 2010.<sup>1</sup> Although the department's request for a ruling and claims under sections 552.101 and 552.108 of the Government Code were timely submitted to this office, the department did not raise its claims under section 552.130 of the Government Code until September 17, 2010. Consequently, we find the department failed to comply with the procedural requirements of section 552.301 with respect to its claim under section 552.130 of the Government Code.

Generally, a governmental body's failure to comply with section 552.301 results in the waiver of its claims under the exceptions at issue, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.130 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception, along with your timely-raised claims under sections 552.101 and 552.108 of the Government Code.

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 section 261.201 of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under

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<sup>1</sup>You inform us that September 6, 2010 was a department holiday. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act.

this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert report number 0243691-P is excepted from disclosure under section 261.201. We note report number 0243691-P involves a child custody dispute and not allegations of abuse or neglect. Upon review, we find you have not demonstrated that this information consists of a report of alleged or suspected child abuse or neglect made under chapter 261 or was used or developed in an investigation under chapter 261. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of the Family Code). Accordingly, we conclude report number 0243691-P is not confidential under section 261.201 of the Family Code, and it may not be withheld under section 552.101 on that basis.

Section 552.108(a)(1) of the Government Code 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[.]” *Id.* § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state section 552.108 protects part of the requested information. You have marked arrest report number 0335370-W under section 552.108. You state this information pertains to a pending case. Based upon your representation and our review, we conclude that the release of arrest report number 0335370-W would interfere with the detection, investigation, or prosecution of crime. *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). Accordingly, section 552.108(a)(1) is generally applicable to arrest report number 0335370-W.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold arrest report number 0335370-W under section 552.108(a)(1).<sup>2</sup>

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<sup>2</sup>We note the basic information contains the arrestee’s social security number. 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. Gov’t Code § 552.147.

Section 552.101 also encompasses section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. 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). The City of Dallas is part of an emergency communication district that was established under section 772.318.<sup>3</sup> You have marked telephone numbers in the responsive information that you seek to withhold under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Provided that the information you have marked consists of originating telephone numbers furnished by a 9-1-1 service supplier, we agree that the department must withhold the marked information under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which 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 established. *Id.* at 681-82. The types 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, we find you have failed to demonstrate that any portion of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, no portion of the remaining information may be withheld under section 552.101 on the basis of common-law privacy.

Section 552.130 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). Upon review, we find that the department must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code.<sup>4</sup>

In summary, with the exception of basic information, the department may withhold arrest report number 0335370-W under section 552.108(a)(1) of the Government Code. Provided

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

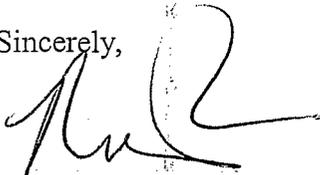
<sup>4</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting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

that the information you have marked consists of originating telephone numbers furnished by a 9-1-1 service supplier, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department must withhold the Texas motor vehicle record information you 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](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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/em

Ref: ID# 399958

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)