



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 8, 2011

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

OR2011-08121

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# 419993 (DPD Reference No. 2011-2458).

The Dallas Police Department (the "department") received a request for 110 specified incident reports. You indicate that the department does not maintain information related to some of the requested incident reports.<sup>1</sup> You claim portions of the requested information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

<sup>2</sup>We 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 exempts 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 made confidential by statute, including section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). You inform us that the requestor has not provided the department with two of the three requisite pieces of information specified by the statute. Accordingly, the department must withhold the submitted CR-3 accident report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses section 58.007 of the Family Code. The relevant language of section 58.007 reads:

(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). Under section 58.007, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007, a "child" is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Upon review, we agree the incident reports you have marked involve juvenile delinquent conduct that occurred after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this information. Therefore, the incident reports you have marked are confidential under

section 58.007(c) of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code.

Section 552.101 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). The type 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. 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 information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The department has failed to demonstrate, however, how the remaining information it has marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the remaining information it has marked under section 552.101 in conjunction with common-law privacy.

You assert some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.<sup>3</sup> Gov't Code § 552.130(a)(1), (2). We agree the department must withhold the Texas motor vehicle record information you have marked and the information we have marked under section 552.130.

In summary, the department must withhold the submitted CR-3 accident report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The department must withhold the incident reports you have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The department must withhold the information you have marked and the information we have marked under section 552.130 of the Government Code. The remaining information must be released.

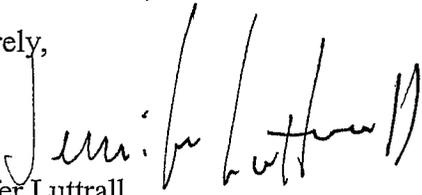
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<sup>3</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number and Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 419993

Enc. Submitted documents

c: Requestor  
(w/o enclosures)