



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2004

Mr. David L. Hay
Officer for Information
Dallas Community College District
701 Elm Street
Dallas, Texas 7502-3299

OR2004-1077

Dear Mr. Hay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196153.

The Dallas Community College District (the "district") received a request for any police reports filed by a named individual against the requestor during a specified time period. You state that you will provide the requestor with some responsive information. You claim that the remaining 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.

Section 552.108 of the Government Code 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:

(1) release of the information would interfere with the detection, investigation or prosecution of crime;

(2) it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2). Generally speaking, subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. 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* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). On the other hand, a governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

In this instance, although you inform this office that the submitted information is “held by a law enforcement agency and deals with the detection and investigation of a crime[.]” you have not stated that the requested information pertains to an ongoing criminal investigation or prosecution. Additionally, while you assert that “if the [named individual] knew in advance that the information that she provided would be subject to public disclosure, it would compromise any detection and investigation of this matter[.]” you have failed to explain how the release of this information would interfere in some way with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Thus, you have not met your burden under section 552.108(a)(1). Furthermore, you have failed to demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). Thus, you have not met your burden under section 552.108(a)(2). Therefore, section 552.108 is not applicable to the submitted information.

You also argue that the complainant's personally identifiable information in the offense report should be withheld from disclosure because the named individual is “concerned for her safety.” Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses the doctrine of common-law privacy.¹ This office has determined that information may be withheld from public disclosure under section 552.101 in conjunction with common-law privacy upon a showing of certain “special circumstances.” *See* Open Records Decision No. 169 (1977). This office considers “special circumstances” to refer to a very narrow set of situations in which the release of information would likely cause someone to face “an imminent threat of physical danger.” *Id.* at 6. Such “special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.*

¹ Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

Upon review, we find that you have not adequately demonstrated an imminent physical danger that would constitute such "special circumstances." Thus, we conclude that you may not withhold the complainant's identifying information in the submitted documents under section 552.101 in conjunction with the common-law right to privacy.

Finally, section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, we have marked the information in the submitted documents that the district must withhold pursuant to section 552.130.

In summary, the section 552.130 information must be withheld from public disclosure. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 196153

Enc. Submitted documents

c: Mr. John Koen
2357 Fabens Road #104
Dallas, Texas 75229
(w/o enclosures)