



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2004

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR2004-10270

Dear Mr. Ray:

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# 214200.

The City of Longview (the "city") received two requests for information. The first request seeks police reports involving domestic violence in which three named individuals were involved. The second request seeks one specified offense report concerning one of the individuals identified in the first request and that is also responsive to the first request. You claim that the requested information, or portions thereof, are excepted from disclosure under sections 552.101, 552.103, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains a court-filed document, which is expressly public under section 552.022 of the Government Code and may not be withheld unless confidential under other law. *See Gov't Code § 552.022(a)(17)*. Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. *See Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); see also Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally)*. Therefore, this exception does not constitute other law for purposes of section 552.022, and the court-filed document may not be withheld on this basis. However, you also raise sections 552.101 and 552.130, which are other law for purposes of section 552.022. Accordingly, we will

consider the applicability of these exceptions to the court-filed document and the other information for which you claim sections 552.101 and 552.130.

Section 552.101 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 the doctrine of common law privacy. Common law privacy 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). 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. 540 S.W.2d at 683.

Further, this office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have reviewed your arguments and the submitted information and find that none of this information is protected by common-law privacy. *See* Open Records Decision No. 611 at 1 (1992) (family violence generally not considered private). Therefore, none of the information may be withheld under section 552.101 on that basis.

- Next we address your claim that section 552.130 is applicable to portions of the submitted information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or

- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

You must withhold the Texas driver's license numbers, vehicle identification numbers, license plate numbers, personal identification numbers and related information that you have marked under section 552.130. We have marked an additional driver's license number contained in the court-filed document and we have marked some information that is not subject to section 552.130 and that must be released.

Next, we consider the applicability of section 552.108 to the remaining submitted information. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 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), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information you have marked in the submitted offense reports relates to pending criminal investigations and/or prosecutions. Based upon this representation, we conclude that the release of the information you have marked in the submitted offense reports 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).

We note, however, that information normally found on the front page of an offense report is generally considered public. See generally Gov't Code § 552.108(c); *Houston Chronicle*; Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. We note that you claim that section 552.108 is applicable to an arrestee's social security number. Basic information includes an arrestee's social security number. ORD 127 at 3. Although section 552.108(a)(1) authorizes you to withhold the remaining information you have marked from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. See Gov't Code § 552.007.¹

You also assert that the arrestee's social security number is confidential under section 552.101 of the Government Code. This section also encompasses information protected by other statutes. Social security numbers may be withheld in some circumstances under section 552.101. A social security number or "related record" may be excepted from disclosure

¹Because our ruling is dispositive, we need not consider your remaining claims for this information.

under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the court-filed document must be released. Except where otherwise indicated by us, the city must withhold the information it has marked and that we have marked under section 552.130. With the exception of basic information, which must be released, the city may withhold the information it has marked accordingly under section 552.108(a)(1). The marked social security number may be confidential under federal law. All remaining 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

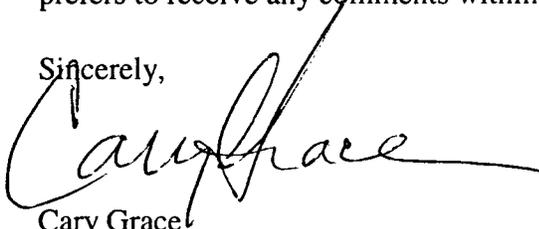
should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 214200

Enc. Submitted documents

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