ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2005

Mr. Leonard V. Schneider
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2005-10109

Dear Mr. Schneider:

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# 235093.

The City of League City (the "city"), which you represent, received a request for information related to a particular incident. You state that some of the information has been released to the requestor. You claim that the remainder of the requested 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, as well as your response to our letter of October 25, 2005, seeking additional information required for our decision. *See* Gov't Code § 552.303 (providing for attorney general request for submission of additional information attorney general determines necessary to render decision).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. 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 Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (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. *Id.* at 683. Information may also be withheld under section 552.101 in conjunction with common-law privacy upon a showing of "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.* We determine whether a request for information presents such "special circumstances" on a case-by-case basis. *Id.*

In this instance, the city states that the "witness information" and "other person information" must be withheld because "the witnesses can reasonably fear retribution." However, the city failed to explain how releasing this information would be likely to cause someone to face imminent danger of harm or death rather than a generalized and speculative fear of harassment or retribution. Upon review of the city's arguments and the information at issue, we conclude that the city may not withhold any information under section 552.101 in conjunction with the "special circumstances" aspect of common-law privacy.

Section 552.108(a) 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: (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), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested offense report relates to a pending criminal investigation. Based on your representations and our review, we determine that the release of pages 000006 through 000010 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). Thus, these pages may be withheld under section 552.108(a)(1).

We note that a portion of the remaining submitted information may be subject to section 552.130 of the Government Code. This section excepts information from disclosure 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. *See* Gov't Code § 552.130. Upon review, however, we are unable to determine whether a portion of the marked motor vehicle information pertains to the requestor's vehicle. If the city determines that the marked motor vehicle information on page 000003 pertains to the requestor's vehicle, then the requestor has a special right of access to this information pursuant to section 552.023 of the Government Code and it must be released to the requestor. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). Otherwise, the city must withhold this information and the marked driver's license number under section 552.130 of the Government Code.

We note that the remaining submitted information contains social security numbers that are subject to section 552.147 of the Government Code.[1] Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. However, section 552.147 excepts information from disclosure in order to protect individuals' privacy. Therefore, the requestor is entitled to his own social security number, and it may not be withheld from him under section 552.147. *See* Gov't Code § 552.023. Thus, the social security numbers of individuals other than the requestor must be withheld under section 552.147.[2]

In summary, the city may withhold pages 000006 through 000010 from disclosure pursuant to section 552.108(a)(1). If the city determines that the marked motor vehicle information on page 000003 pertains to the requestor's vehicle, then the requestor has a special right of access to this information pursuant to section 552.023 of the Government Code and it must be released to the requestor. Otherwise, the city must withhold all of the marked motor vehicle information from disclosure under section 552.130 of the Government Code. The social security numbers of individuals other than the requestor must be withheld under section 552.147. The remaining submitted information must be released.[3]

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).

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[1]Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

[2]We 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.

[3]Because some of this information is confidential with respect to the general public, if the department receives a future request for this information from a person other than the requestor or his authorized representative, the department should again seek our decision.

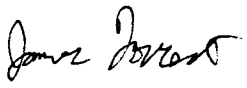
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



James Forrest
Assistant Attorney General
Open Records Division

JF/jpa

Ref: ID# 235093

Enc. Submitted documents

c: Mr. Gregory Johnson
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(w/o enclosures)