



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2006

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2006-06459

Dear Mr. Mann:

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# 251887.

The Garland Police Department (the "department") received a request for information relating to an arrest of a named individual, including records of 911 calls, police radio traffic, and MDT/MVT communications; in-car audio and video recordings; photographs; and other records. You state that some of the requested information does not exist.¹ You inform us that the department has released some of the requested information. You claim that other responsive 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 have reviewed the information you submitted.²

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

¹We note that the Act does not require the department to release information that did not exist when it received this request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We note that portions of the submitted videotapes do not appear to be responsive to this request for information. This decision does not address the public availability of any information that is not responsive to the request, and the department need not release non-responsive information.

prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information that you have marked in red, as well as the submitted videotapes and CD-ROM, relate to an ongoing investigation. Based on your representation, we find that section 552.108(a)(1) is applicable to the information in question. *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 that 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). You state, and have provided documentation reflecting, that basic information has been released. We therefore conclude that the department may withhold all of the information marked in red, the videotapes, and the CD-ROM under section 552.108 of the Government Code.

Next, we address your claim under section 552.101 of the Government Code. This section excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. You claim that some of the submitted information is confidential under section 552.101 in conjunction with the common law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common law privacy when the information is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private).

You seek to withhold the information marked in blue under the common law right to privacy. We note, however, that the requestor is an attorney for the arrested person who is the subject of the information in question. As the arrested person’s authorized representative, the requestor has a special right of access to her private information under section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access, beyond right of general public, to information held

by governmental body that relates to that person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Therefore, the department may not withhold any of the information marked in blue under section 552.101 of the Government Code in conjunction with common law privacy.

You also raise section 552.130 of the Government Code. This section excepts from public 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. *See* Gov't Code § 552.130(a)(1)-(2). You seek to withhold the information marked in green under section 552.130. We note, however, that this exception also protects personal privacy. The information marked in green consists of the Texas driver's license and motor vehicle information of the requestor's client. The requestor also has a right of access to that information under section 552.023, and thus it may not be withheld from him under section 552.130. *See id.* § 552.023(a); Open Records Decision No. 481 at 4.

Lastly, we note that you also seek to withhold the social security number of the requestor's client. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.³ However, section 552.147 also protects personal privacy. Therefore, the requestor also has a right of access to his client's social security number under section 552.023, and the department may not withhold that information from him under section 552.147. Gov't Code § 552.023(a); Open Records Decision No. 481 at 4.

In summary, the department may withhold all of the information marked in red, the videotapes, and the CD-ROM under section 552.108(a)(1) of the Government Code. The rest of the information at issue must be released.⁴ As we are able to make these determinations, we do not address your other arguments against disclosure.

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

³We 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.

⁴Should the department receive another request for the records at issue from a requestor who would not have a right of access to the private information contained in these records, the department should resubmit these same records and request another decision. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001) (previous determinations).

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).

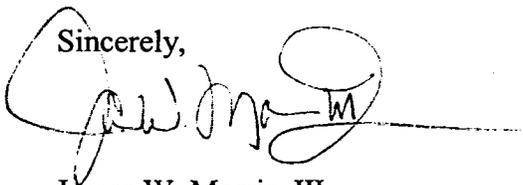
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 251887

Enc: Submitted documents

c: Mr. Richard J. Corbitt
Richard J. Corbitt, P.C.
3400 Carlisle, Suite 350, Lockbox 13
Dallas, Texas 75204-1261
(w/o enclosures)