



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2006

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

OR2006-07062

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# 252914.

The Garland Police Department (the "department") received a request for a specific police report. You state that you will provide the requestor with a portion of the requested information. The department has redacted social security numbers from the submitted information pursuant to section 552.147 of the Government Code.¹ You claim that portions of the remaining requested information are 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.

You claim that the information you have marked in red is excepted from disclosure under section 552.108 of the Government Code. 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." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and

¹We 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 officer under the Act.

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 submitted information relates to a pending criminal investigation. Based upon this representation and our review, we determine that the release of the information you have marked 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). Accordingly, the department may withhold the information marked in red pursuant to section 552.108(a)(1).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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 types 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. In addition, 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); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). The department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common law privacy. However, the department has failed to demonstrate that the remaining information at issue constitutes highly intimate or embarrassing information for the purpose of common law privacy. Thus, the department may not withhold any of the remaining information on this basis.

In addition, you claim that the information you have marked in green is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from 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." Gov't Code § 552.130(a)(1), (2). Thus, the department must withhold the marked Texas driver's license numbers in the submitted information under section 552.130.

In summary, the department may withhold the information marked in red under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common law privacy and the marked Texas driver's license numbers under section 552.130 of the Government Code. The remaining information must be released.

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, 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,



Anne Prentice
Assistant Attorney General
Open Records Division

AP/krl

Ref: ID# 252914

Enc. Submitted documents

c: Ms. Juanita Edgecomb
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(w/o enclosures)