



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 9, 2007

Ms. P. Armstrong  
Assistant City Attorney  
Criminal Law and Police Section  
1400 S. Lamar  
Dallas, Texas 75215

OR2007-02687

Dear Ms. Armstrong:

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# 273095.

The Dallas Police Department (the "department") received a request for three specific incident reports. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (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

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<sup>1</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

Report #0957070-P contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. In most cases, only this information would be excepted from disclosure under section 552.101 in conjunction with common-law privacy. In this instance, however, the requestor knows the nature of the incident in question as well as the identity of the individual involved. Therefore, withholding only the nature of the incident would not preserve the individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, we find that the department must withhold report #0957070-P in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim that portions of the remaining information are excepted from public disclosure under section 552.108 of the Governmental 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 why the release of the requested information would interfere with law enforcement. *See id.* §§ 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 remaining records at issue relate to pending criminal investigations and prosecutions. Based upon this representation, we conclude that the release of the marked information 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 you have marked under section 552.108(a)(1) of the Government Code.<sup>2</sup>

You claim that some of the remaining information you have marked is excepted from public disclosure under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

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<sup>2</sup>Because our ruling is dispositive, we need not address your additional argument for this information.

Gov't Code § 552.130(a)(1), (2). Upon review, we agree that you must withhold the Texas-issued motor vehicle record information you have marked under section 552.130 of the Government Code.

You claim that the social security number you have marked is *excepted* from public disclosure under section 552.147 of the Government Code. Section 552.147 provides that “[t]he social security number of a living person is *excepted* from” required public disclosure under the Act. Gov't Code § 552.147. Therefore, the department must withhold the marked social security number under section 552.147 of the Government Code.<sup>3</sup>

In summary, the department must withhold report #0957070-P in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the Texas-issued motor vehicle record information you have marked under section 552.130 of the Government Code. The department must withhold the marked social security number under section 552.147 of the Government Code. As the department does not raise any other *exceptions* against disclosure, 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

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<sup>3</sup>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.

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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 273095

Enc. Submitted documents

c: Mr. Juan Lopez  
5902 Preston Oaks #2112  
Dallas, Texas 75284  
(w/o enclosures)