



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2007

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

OR2007-09656

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#285350.

The Garland Police Department (the "department") received a request for three specified incident reports. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We note that you have redacted a social security number pursuant to section 552.147 of the Government Code.¹ You state that you have released some information to the requestor, including basic information. We have considered the exceptions you claim and reviewed the submitted information.

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. Section 552.101 encompasses the doctrine of common-law privacy, which 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

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 office under the Act.

organs. *Id.* at 683. Upon review, we have marked the portions of the submitted information that are confidential under common-law privacy and must be withheld under section 552.101 of the Government Code.

We note, however, that the requestor is the spouse of the individual at issue. If the requestor is the authorized representative of the individual at issue, then the requestor has a right of access to the marked information pursuant to section 552.023 of the Government Code and the department must release this information to him. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). If the requestor does not have a right of access to the submitted information pursuant to section 552.023, then the department must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we determine that no portion of the remaining information constitutes intimate or embarrassing information of which there is no legitimate concern to the public, and it may not be withheld on this basis.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

- (1) release of the information would interfere with the detection, investigation or prosecution of crime;
- (2) it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a). 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), (a)(2), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that incident number 2007R012234 relates to a pending criminal investigation. Based on this representation, we conclude that the release of the information you have marked in red 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). In addition, you assert that incidents numbered 2007R012211 and 2007R007844 pertain to cases that concluded in results other than conviction or deferred adjudication. Based upon your representations and our review, we determine that section 552.108 of the Government Code is applicable to the information you have marked.

As you acknowledge, however, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information which you state has been released, the department may withhold the information it has marked under section 552.108 of the Government Code.

Section 552.130 of the Government Code 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[.]" Gov't Code § 552.130(a)(1). However, section 552.130 also protects privacy interests. Thus, to the extent the requestor has a right of access under section 552.023 to his wife's private information, it may not be withheld under section 552.130. *Id.* § 552.023(a). To the extent the requestor does not have a right of access to his wife's private information, the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, if the requestor does not have a right of access to the submitted information under section 552.023 of the Government Code, then the department must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. If the requestor has a right of access to his wife's private information under section 552.023 of the Government Code, then the department must release this information. The department may withhold the information it has marked under section 552.108 of the Government Code. The 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, 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,



Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/eeg

Ref: ID# 285350

Enc. Submitted documents

c: Mr. Jesse R. Garcia
301 Ivy Way
Garland, Texas 75043
(w/o enclosures)