



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 2, 2007

Ms. Diane Johnston  
Administrative Support I  
Baytown Police Department  
3200 North Main Street  
Baytown, Texas 77521

OR2007-14396

Dear Ms. Johnston:

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# 293753.

The Baytown Police Department (the "department") received a request for a specified police report. You claim that some of the requested 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.

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, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) 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 some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455

(1987) (prescription drugs, illnesses, operations, and physical handicaps). We agree that the information you have highlighted in yellow, except as we have marked for release, must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that the submitted information contains an alien registration number. This number is made confidential under title 8, section 1304(b) of the United States Code in conjunction with section 552.101 of the Government Code. Section 1304(b) of the United States Code addresses the confidentiality of the registration of aliens under section 1301 of the United States Code and provides:

All registration and fingerprint records made under the provisions of this subchapter shall be confidential, and shall be made available only

(1) pursuant to section 1357(f)(2) of this title, and

(2) to such persons or agencies as may be designated by the Attorney General.

8 U.S.C. § 1304(b). We have marked the information that is made confidential under title 8, section 1304(b) of the United States Code and must be withheld under section 552.101 of the Government Code.

You claim that the information you have highlighted in orange is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.107(a)(1). 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 submitted information relates to a pending criminal prosecution. Based on this representation, we conclude that the release of the information highlighted in orange 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold the orange-highlighted information under section 552.108(a)(1).<sup>1</sup>

You claim that some of the submitted information is excepted from disclosure under section 552.130 of the Government Code. This section excepts from disclosure information

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<sup>1</sup>As we are able to resolve this under section 552.108(a)(1), we do not address your other argument to withhold this information.

that relates to a Texas driver's license or motor vehicle title or registration. Gov't Code § 552.130. We note, however, that in this instance, it is unclear whether the requestor is the victim or the victim's authorized representative. As such, the requestor may have a right of access to some of the marked Texas motor vehicle information pursuant to section 552.023 of the Government Code. *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). Therefore, we rule conditionally. If the requestor is the victim or victim's authorized representative, the department may not withhold the victim's Texas motor vehicle record information under section 552.130, but instead must release it to him pursuant to section 552.023. If the requestor is not the victim or victim's authorized representative, then we agree that the department must withhold this information, in addition to the marked Texas motor vehicle record information not belonging to the victim, under section 552.130.

You assert that some of the remaining information is excepted under section 552.147 of the Government Code, which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the department may withhold the green-highlighted social security numbers of living persons under section 552.147 of the Government Code.<sup>2</sup> However, if the requestor is the victim or the victim's authorized representative, the victim's social security number must be released. *See* Gov't Code § 552.023(b).

In summary, the department must withhold the yellow-highlighted information under section 552.101 of the Government Code in conjunction with common-law privacy, except as we have marked from release. The department must withhold the information we have marked under section 552.101 in conjunction with title 8 section 1304(b) of the United States Code. The pink-highlighted Texas motor vehicle record information must be withheld under section 552.130 of the Government Code, unless the requestor has a right of access to the victim's information under section 552.023 of the Government Code. The department may withhold the orange-highlighted information under section 552.108 of the Government Code and the green-highlighted social security numbers under section 552.147 of the Government Code, unless the requestor has a right of access to the victim's social security number under section 552.023. The remaining submitted 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

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<sup>2</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.

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,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/ma

Ref: ID# 293753

Enc. Submitted documents

c: Mr. Jesus Jaimes  
c/o Gabriel Jaimes  
104 Alva Avenue  
Baytown, Texas 77520  
(w/o enclosures)