



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2008

Mr. Floyd M. Akers
City Attorney
Pflugerville Police Department
P.O. Box 679
Pflugerville, Texas 78691-0679

OR2008-10068

Dear Mr. Akers:

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# 316922.

The Pflugerville Police Department (the "department") received a request for information relating to three specified criminal cases, an internal affairs investigation, and a named police officer. You state that some of the requested information either has been or will be released. You have submitted information that the department seeks to withhold under sections 552.101, 552.108, 552.122, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that some of the submitted information is related to a polygraph examination in which the requestor was the examinee. 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 exception encompasses information that other statutes make confidential. Section 1703.306 of the Occupations Code provides in part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306. We have marked information in the submitted documents that was acquired from a polygraph examination of the requestor. The marked information is

confidential under section 1703.306 of the Occupations Code. To the extent that the submitted video of the requestor's polygraph examination also contains the same types of information, those types of information also are confidential under section 1703.306. Although the information that was acquired from the requestor's polygraph examination is confidential under section 1703.306, the department has the discretion to release that information to the requestor pursuant to section 1703.306(a)(1).¹ See Open Records Decision No. 481 at 9 (1987) (statutory predecessor to Occ. Code § 1703.306 permitted, but did not require, examination results to be disclosed to polygraph examinees).

We also note that some of the remaining information falls within the scope of section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you claim exceptions to disclosure under sections 552.108 and 552.122 of the Government Code, those sections are discretionary exceptions that protect a governmental body's interests and may be waived. See *id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, sections 552.108 and 552.122 are not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the department may not withhold any of the information that is subject to section 552.022(a)(17) under section 552.108 or section 552.122. You also raise sections 552.101 and 552.136 of the Government Code, which are confidentiality provisions for the purposes of section 552.022(a)(17). However, neither of those exceptions is applicable to any of the information that is subject to section 552.022(a)(17).² Therefore, the department may not withhold any of the information that is subject to section 552.022(a)(17) under section 552.101 or section 552.136.

We note, however, that section 552.117 of the Government Code is applicable to some of the information in question.³ Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. We have marked information relating to a peace officer that the department must withhold under section 552.117(a)(2).

¹We note that the department must withhold the entire video of the requestor's polygraph examination if it has no means of redacting the information that may not be released under section 1703.306.

²We note that common-law privacy under section 552.101 is not applicable to information contained in public court documents. See *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992).

³Unlike other exceptions to disclosure under the Act, this office will raise section 552.117 on behalf of a governmental body, as this exception is mandatory and may not be waived. See Gov't Code §§ 552.007, 352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

The information that is subject to section 552.022(a)(17) also includes a personal e-mail address. Section 552.137 of the Government Code states that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure.⁴ *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The department must withhold the e-mail address that we have marked under section 552.137 unless the owner of the e-mail address has consented to its disclosure.

Next, we address your claim 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 § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that some of the remaining information appears to be related to an internal affairs investigation. Section 552.108 is generally not applicable to records of an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (addressing statutory predecessor to Gov’t Code § 552.108). You indicate, however, that the internal affairs investigation is related to an ongoing criminal investigation. You state that the release of the remaining information would jeopardize the criminal investigation. Based on your representations and our review of the information at issue, we find that release of the remaining information would interfere with the detection, investigation, or prosecution of crime. We therefore conclude that section 552.108(a)(1) is applicable in this instance. *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).

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 Houston Chronicle*, 531 S.W.2d at 186-88. The department must release basic information, including detailed descriptions of the offenses, even if the information does not literally appear on the front page of an offense or arrest report. *See Open Records Decision No. 127* (1976) (summarizing types of information deemed public by *Houston Chronicle*).

⁴Section 552.137 also is a mandatory exception and may not be waived. Gov’t Code §§ 552.007, .352; ORD 674 at 3 n.4.

We note that basic information includes the identity of the complainant and a detailed description of the offense. *See* ORD 127 at 3-4. In this instance, the submitted information is related to an alleged sexual offense. Therefore, the department would ordinarily be required to withhold the identity of the alleged victim of the offense under section 552.101 in conjunction with common-law privacy. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). In this instance, however, the victim is the requestor, who has a special right of access to her own private information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).⁵ Therefore, the department must release basic information in accordance with section 552.108(c). The department may withhold the remaining information under section 552.108(a)(1).

In summary: (1) the submitted information that was acquired from the requestor's polygraph examination is confidential under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code, but the department has discretion to release that information to the requestor under section 1703.306(a)(1); (2) the department must withhold the information that we have marked under section 552.117(a)(2) of the Government Code; (3) the department must withhold the e-mail address that we have marked under section 552.137 of the Government Code unless the owner of the e-mail address has consented to its disclosure; (4) the department must release the rest of the marked information that is subject to section 552.022(a)(17) of the Government Code; and (5) the department may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c).⁶ As we are able to make these determinations, we need 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 governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days.

⁵Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

⁶Should the department receive another request for these same records from a person who would not have a right of access to this requestor's private information, the department should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302.

Id. § 552.353(b)(3). If the governmental body does not file suit over 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).

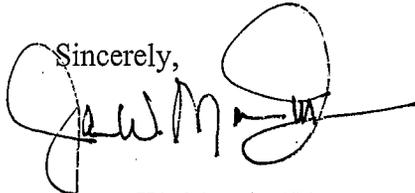
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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/jh

Ref: ID# 316922

Enc: Submitted information