



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2009

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

OR2009-04257

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# 343226 (GCA09-0168 and GCA09-0169).

The Garland Police Department (the "department") received two requests for the incident report, in-car video, and voice recordings pertaining to a specified incident. You state you will release a redacted copy of the information. You claim portions of the submitted information are excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted report pertains to an investigation that is currently ongoing, in which charges have been filed. You also state the release of this information would interfere with the detection, investigation, and/or prosecution of an ongoing case. Based on your representations and our review, we conclude 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. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Accordingly, the department may withhold the information marked in red under section 552.108(a)(1) of the Government Code.

We note the remaining information contains information protected by common-law privacy. 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.”¹ 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 abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find a portion of the submitted report is intimate or embarrassing and not of legitimate public interest. We note, however, the individual involved in the incident, the second requestor, has a right of access to this information as it pertains to him. Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Accordingly, the department may not withhold the private information we have marked from the second requestor, but must withhold this information from the first requestor under section 552.101 in conjunction with common-law privacy.

Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We note, and you acknowledge, section 552.130 protects personal privacy. Thus, as mentioned above, pursuant to section 552.023 of the Government Code, the second requestor has a right of access to his own Texas driver's license number. *See id.* § 552.023(a). Accordingly, except for his Texas driver's license number, the department must withhold the Texas motor vehicle information marked in green from the second requestor under section 552.130. The department must withhold all of the Texas motor vehicle information marked in green from the first requestor under section 552.130.

In summary, the department may withhold the information you have marked in red under section 552.108(a)(1) of the Government Code. The department must withhold the

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information we have marked under section 552.101 in conjunction with common-law privacy from the first requestor. Except for his own driver's license number, the department must withhold the Texas motor vehicle information marked in green from the second requestor under section 552.130. The department must withhold all of the Texas motor vehicle information you have marked in green from the first requestor under section 552.130. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 343226

Enc. Submitted documents

c: Requestor (2)
(w/o enclosures)

