



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 22, 2009

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001

OR2009-05346

Dear Ms. Chang:

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# 340495 (Houston PIR #s 15096, 15112).

The City of Houston (the "city") received a request for (1) a particular officer's service record, (2) psychological evaluations of the named officer, (3) a listing of any connections the named officer has with hate groups, (4) a copy of the call that led to the issuance of a particular citation, (5) calls received from several police vehicles, (6) radio transmissions between these police vehicles, (7) a copy of the named officer's permit to work for a particular company, (8) a copy of the named officer's statement to internal affairs regarding the incident at issue, (9) radio transmissions between the named officer's vehicle and any other vehicle, (10) the dash camera videotape from the named officer's vehicle, and (11) any video taken, received, or requested from a particular company. You state you have released information responsive to items 4 and 5. You state you do not have information responsive to items 1, 2, 3, 7, 8, 10, and 11. The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). You claim the submitted

information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

You seek to withhold the submitted MDT records under section 552.108(a)(1) of the Government Code, which 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 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 MDT records relate to an open and ongoing criminal prosecution. Based upon this representation, we conclude release of the information related to the particular prosecution at issue 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). The city may therefore withhold the information we have marked under section 552.108(a)(1). We do not find the remaining information is related to the prosecution in question and you have failed to address how and why release of the remaining information would interfere with the detection, investigation, or prosecution of crime. Therefore, we do not have any basis to find release of the remaining information would interfere with the detection, investigation, or prosecution of crime, and you may not withhold the remaining information under section 552.108.

We note some of the remaining information in the submitted MDT records is subject to section 552.101 of the Government Code.<sup>2</sup> Section 552.101 excepts “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 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 688, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See Open Records Decision No. 545 (1990).*

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<sup>1</sup>We note although the city also raises sections 552.101, 552.103, 552.107, 552.111, 552.1175, 552.119, 552.130, and 552.147 of the Government Code, the city makes no arguments to support these exceptions. Therefore, we assume the city has withdrawn its claim that these sections apply to the submitted information.

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Further, we note some of the remaining information in the submitted MDT records is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a Texas motor vehicle title or registration. Gov't Code § 552.130(a)(2). Accordingly, the city must withhold the Texas motor vehicle record information we marked under section 552.130.

In summary, the city may withhold the information we have marked under section 552.108(a)(1) of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. 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](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,



Emily Sitton  
Assistant Attorney General  
Open Records Division

EBS/eeg

Ref: ID# 340495

Enc. Submitted documents

c: Requestor  
(w/o enclosures)