



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2009.

Ms. Christina R. Sanchez
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2009-06069

Dear Ms. Sanchez:

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# 342140.

The El Paso District Attorney's Office (the "district attorney") received a request for information related to monies seized from a named individual. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, and 552.130 of the Government Code, as well as Texas Rule of Civil Procedure 192.5 and article 39.14 of the Code of Criminal Procedure. We have considered your arguments and reviewed the submitted information.

Initially, we address your arguments under section 552.108 of the Government Code, which provides in relevant 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;

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(1), (a)(4), (b)(1), (b)(3). Generally, a governmental body claiming sections 552.108(a)(1) and 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Attachment D relates to a pending criminal prosecution and that release of this information would interfere with the detection, investigation, or prosecution of crime. Based on your representations and our review, we find section 552.108(a)(1) is applicable. *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). Therefore, the district attorney may withhold Attachment D under section 552.108(a)(1).¹

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of Attachment D.

Sections 552.108(a)(4) and 552.108(b)(3) are applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state. You state Attachment C consists of notes “written by the attorneys representing the State of Texas in anticipation of and in preparation for litigation after the case had been presented to [the district attorney’s] office for prosecution” and therefore consists of attorney work product. Upon review, we agree Attachment C was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation. Therefore, we find sections 552.108(a)(4) and 552.108(b)(3) are applicable and the district attorney may withhold Attachment C on that basis.²

Next, you raise chapter 730 of the Transportation Code for Attachment E. 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 another statute makes confidential, including section 730.004 of the Transportation Code which provides:

Notwithstanding any other provisions of law to the contrary, including chapter 552, Government Code, except as provided by Sections 730.005 - 730.008, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

Transp. Code § 730.004. Section 730.003 provides that, for purposes of chapter 730 of the Transportation Code:

(1) “Agency” includes any agency or political subdivision of this state, or an authorized agent or contractor of an agency of this state, that compiles or maintains motor vehicle records.

...

(4) “Motor vehicle record” means a record that pertains to a motor vehicle operator’s or driver’s license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document. The term does not include:

(A) a record that pertains to a motor carrier; or

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of Attachment C.

(B) an accident report prepared under Chapter 550 or 601.

Id. § 730.003(1), (4). Section 730.004 only applies to an “agency” that compiles or maintains motor vehicle records. *See id.* § 730.003(1). You have failed to demonstrate that the district attorney compiles or maintains motor vehicle records. Therefore, section 730.004 does not apply to the district attorney. Accordingly, no part of Attachment E may be withheld under section 552.101 in conjunction with section 730.004 of the Transportation Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

You also claim Attachment E is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 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 [or] a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130. Therefore, the district attorney must withhold the Texas motor vehicle record information you have marked, as well as the additional information we have marked, pursuant to section 552.130 of the Government Code. The remaining information in Attachment E is not the type of information subject to section 552.130 and it may not be withheld on that basis.

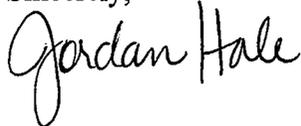
Finally, we note some of the remaining information in Attachment E is excepted from disclosure under common-law privacy which is also encompassed by section 552.101 of the Government Code. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found that 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). Therefore, the district attorney must withhold the lien information we have marked in Attachment E under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the district attorney may withhold Attachments C and D under section 552.108 of the Government Code. The marked Texas motor vehicle record information must be withheld under section 552.130 of the Government Code. The district attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 342140

Enc. Submitted documents

cc: Requestor
(w/o enclosures)