



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 8, 2009

Mr. C. Patrick Phillips  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2009-06191

Dear Mr. Phillips:

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# 342542 (CFW PIR# 2156-09).

The City of Fort Worth (the "city") received a request for a specified incident report. You state that Texas-issued motor vehicle information will be redacted pursuant to previous determinations issued in Open Records Letter Nos. 2007-00198 (2007) and 2006-14726 (2006). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also state that you will redact social security numbers not belonging to the requestor from the submitted information pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a

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<sup>1</sup>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. Gov't Code § 552.147(b).

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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us, and provide an affidavit stating, that the Tarrant County District Attorney's Office objects to disclosure of the submitted report because its release would interfere with a pending criminal prosecution. Based upon this representation and the submitted affidavit, we conclude that the release of the report 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). Therefore, we conclude that section 552.108(a)(1) is applicable to the report.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See Gov't Code* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 184-85; *see also* Open Records Decision No. 127-(1976) (summarizing types of basic information that must be made available to public). In this case, however, the city seeks to withhold some of the basic information in the submitted report under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 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 common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and of no legitimate public interest. *See Indust. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information must be withheld under section 552.101 in conjunction with common-law privacy upon a showing of "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* We determine whether a request for information presents such "special circumstances" on a case-by-case basis. *Id.* at 7.

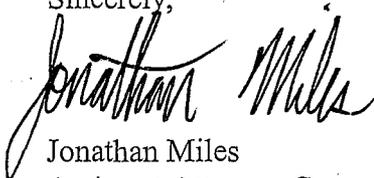
In this instance, the city informs us the information it has marked in the submitted information identifies undercover officers and asserts that the release of the information would not only compromise the effectiveness of these individuals as undercover officers, but would likely cause the officers to face imminent threat of physical danger. Based on the city's representations and our review, we agree that the city must withhold the information you have marked in the basic information under section 552.101 of the Government Code in conjunction with the "special circumstances" aspect of common-law privacy.

Therefore, with the exception of basic information, the city may withhold the submitted information pursuant to section 552.108. In releasing the basic information, the city must withhold the marked identifying information of the undercover officer 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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 342542

Enc. Submitted documents

c: Requestor  
(w/o enclosures)