



ATTORNEY GENERAL OF TEXAS
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July 6, 2009

Ms. Rebecca Brewer
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P.O. Box 1210
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OR2009-09219

Dear Ms. Brewer:

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# 347969.

The Frisco Police Department (the "department"), which you represent, received a request for the vehicle video recordings of the ten most recent driving while intoxicated arrests by a named officer. You claim the submitted video recordings are 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.

Initially, we note the requestor has agreed to the redaction of Texas driver's license and license plate numbers. As such, those types of information are not responsive to the present request and will not be addressed by this ruling.

Next, we note some of the submitted video recordings are not vehicle video recordings, as specified in the request. Thus, the non-vehicle video recordings are not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A 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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert the submitted responsive

video recordings pertain to pending criminal investigations. Based on your representations and our review, we determine release of the video recordings for case numbers 08084570, 09005440, and 09020759 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). Thus, the department may withhold these video recordings pursuant to section 552.108(a)(1) of the Government Code.¹ We note you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

The remaining responsive video recordings, however, were submitted with case history sheets that show these cases have ended in convictions. Because of this contradictory information, we find you have failed to demonstrate the video recordings for case numbers 08121757, 07096944, and 07045983 pertain to pending criminal investigations. Furthermore, you have not otherwise explained how or why releasing these video recordings would interfere with the detection, investigation, or prosecution of crime. *See* 531 S.W.2d 177. Consequently, you have failed to demonstrate the applicability of section 552.108(a)(1) to these recordings. Accordingly, the remaining video recordings may not be withheld under section 552.108(a)(1) of the Government Code.

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 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 668, 685 (Tex 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. You claim the remaining video recordings are protected in their entirety under common-law privacy because they relate to alcohol intoxication of the individuals whose privacy interests are at issue. We note, however, the individuals were arrested for driving while intoxicated. Although their intoxication may be intimate or embarrassing, we find there is a legitimate public interest in this information because it relates to alleged criminal behavior. *See Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). Thus, the remaining video recordings may not be withheld in their entirety under common-law privacy.

However, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe

¹As our ruling is dispositive, we need not address your remaining argument against disclosure for this information.

emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have indicated medical information contained in one of the remaining video recordings that is highly intimate or embarrassing and not of legitimate public concern. The department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

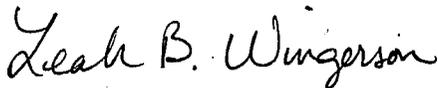
We note the remaining information includes a Texas identification number, which is protected by section 552.130 of the Government Code.² This section provides information relating to a personal identification document issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(3). Therefore, the department must withhold the Texas identification number we have indicated under section 552.130 of the Government Code.

In summary, the department may withhold the video recordings for case numbers 08084570, 09005440, and 09020759 under section 552.108(a)(1) of the Government Code. The department must withhold the information we have indicated in the remaining video recordings under section 552.101 of the Government Code in conjunction with common-law privacy and under section 552.130 of the Government Code. The remaining responsive 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

²The 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).

Ref: ID# 347969

Enc. Submitted documents

c: Requestor
(w/o enclosures)