



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 14, 2009

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

OR2009-09710

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# 348716 (CFW PIRs # 3212-09, 3213-09, 3222-09, 3225-09, 3248-09).

The City of Fort Worth (the "city") received five requests for a specified police report and supporting documents. 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. We have also received and considered comments from one of the requestors. *See* Gov't Code § 552.304 (interested party may submit written comments concerning disclosure of requested information).

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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).

Initially, we note the submitted documents contain information that has been filed with a court. Court-filed documents are expressly public under section 552.022(a)(17) of the Government Code. *Id.* § 552.022(a)(17). Such information must be released unless it is expressly confidential under other law. You claim the submitted court-filed documents are excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the city may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. As you raise no other exceptions for these documents, they must be released. We next address the exceptions you raise for the remaining 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 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 submitted report pertains to a pending criminal investigation. 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). We note that the remaining information contains a computer-aided dispatch ("CAD") report. In Open Records Decision No. 649 (1996), this office concluded that information contained in a CAD report is substantially the same as basic information and thus is not excepted from public disclosure under section 552.108. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (no qualitative difference between information contained in police dispatch records or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*). Therefore, because the information contained in the CAD report is basic information, that information may not be withheld under section 552.108(a)(1). In this case, however, the city seeks to withhold some of the basic information in the remaining information 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 *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

You claim that the arrestee's home address within the basic information is confidential pursuant to common-law privacy and "special circumstances."<sup>2</sup> You argue that it may be necessary to withhold the arrestee's home address from the basic information to protect the arrestee and his family members from harm. You also state that the city does not know whether the arrestee is likely to face an "imminent threat of physical danger" sufficient to withhold the information at issue under common-law privacy on the basis of "special circumstances." However, the Third Court of Appeals recently ruled that the "special circumstances" exception found in past Attorney General Open Records Decisions directly conflicts with Texas Supreme Court precedent regarding common-law privacy. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. and Hearst Newspapers, L.L.C.*, No. 03-08-00516-CV, 2009 WL 1491880 (Tex. App.—Austin May 29, 2009, no pet. h.). The court of appeals ruled that the two-part test set out in *Industrial Foundation* is the "sole criteria" for determining whether information can be withheld under common-law privacy. *Id.*; see also *Indus. Found.*, 540 S.W.2d at 686. We note that an individual's home address is generally not private information under section 552.101. See Open Records Decision Nos. 554 at 3 (1990) (disclosure of a person's home address and telephone number is not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers do not qualify as "intimate aspects of human affairs"). Upon review, we find that this information is not intimate or embarrassing. As you have failed to meet the first prong of the *Industrial Foundation* test for privacy, we find that the information at issue is not confidential under common-law privacy and the city may not withhold it under section 552.101. *But see* Gov't Code § 552.151 (providing that if, under specific circumstances, the disclosure of information in the custody of a governmental body that relates to an employee or officer of the governmental body would subject the employee or officer to a substantial threat of physical harm, the information is excepted from the requirements of section 552.021).

In summary, the city must release the court-filed documents we have marked under section 552.022(a)(17) of the Government Code. With the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

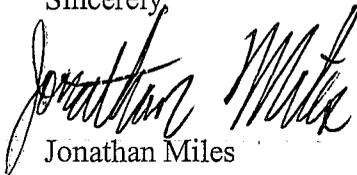
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<sup>2</sup>We note that, although you also seek to withhold certain witness information and the arrestee's phone number on the basis of special circumstances, basic information does not include the identification or description of witnesses or the phone number of the arrestee. See *Houston Chronicle*, 531 S.W.2d at 187, ORD 127 at 3-4.

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# 348716

Enc. Submitted documents

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(w/o enclosures)

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