



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2009

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2009-11811

Dear Mr. Alicie:

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# 357796 (BPD #2009-28593).

The Baytown Police Department (the "department") received a request for a specified offense report. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that the information that you have highlighted in orange is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) 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 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 inform us that the submitted report relates to a pending criminal prosecution. Based upon your representation and our review, we find that section 552.108(a)(1) is applicable to the information you have highlighted in orange. *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.*, 536 S.W.2d 559 (Tex. 1976) (per

curiam) (court delineates law enforcement interests that are present in active cases). The department may, therefore, withhold the orange-highlighted information pursuant to section 552.108(a)(1) of the Government Code.¹ We note that you have the discretion to release all or part of the orange-highlighted information that is not otherwise confidential by law. Gov't Code § 552.007.

Next, you claim that the information you highlighted in yellow is confidential based on common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section 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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find that the information we have marked in the submitted report is highly intimate and embarrassing and of no legitimate public interest. Thus, the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information you have highlighted in yellow is not highly intimate or embarrassing and is of legitimate public concern. Accordingly, the remaining yellow-highlighted information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, you claim the social security numbers you have highlighted in green are excepted from disclosure under section 552.147 of the Government Code. This section provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. Therefore, the department may withhold the green-highlighted social security numbers under section 552.147 of the Government Code.²

¹As our ruling is dispositive with respect to the orange-highlighted information, we need not address your remaining arguments against the disclosure of portions of that information.

²We note that 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.

In summary, the department may withhold the orange-highlighted information under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the green-highlighted social security numbers under section 552.147 of the Government Code. The remaining information must be released to the requestor.

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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 357796

Enc. Submitted documents

c: Requestor
(w/o enclosures)