



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 18, 2009

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2009-13181

Dear Mr. Mann:

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# 355850 (GCA09-0523).

The Garland Police Department (the "department") received a request for information pertaining to a specified incident. You state you have released some of the requested information. You state you have no information responsive to a portion of the request.¹ You claim that some of the submitted information is exempted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code exempts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

¹We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We note that you have redacted a social security number from the submitted information. 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. *See Gov't Code* § 552.147(b).

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 state that the submitted information marked in red, the submitted photographs, and the submitted audio recording relate to an ongoing criminal investigation. Based on this representation and our review, we conclude that the release of this information 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. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, the department may withhold the information you have marked in red, the photographs, and the audio recording under section 552.108(a)(1) of the Government Code.³

~~You claim that some of the remaining information is excepted from disclosure under common-law privacy. Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if it (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 type 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 medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under 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 agree that portions of the remaining information are highly intimate or embarrassing and of no legitimate public interest. Accordingly, we conclude that the department must withhold the information you have marked in blue under section 552.101 in conjunction with common-law privacy.~~

You also assert that some of the remaining information, which you have marked in green, is excepted under section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). We agree that the Texas driver’s license and motor vehicle information you have marked in the remaining information must be withheld under section 552.130.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

In summary, the department may withhold the information you have marked in red, the photographs, and the audio recording under section 552.108(a)(1) of the Government Code. The department must withhold the information you have marked in blue under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information you have marked in green under section 552.130 of the Government Code. 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, toll free, at (888) 672-6787.~~

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 355850

Enc. Submitted documents

cc: Requestor
(w/o enclosures)