



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2009

Ms. Dahlia S. Rico
Records Clerk
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78540

OR2009-14410

Dear Ms. Rico:

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# 362802 (Reference ID# 4357).

The Edinburg Police Department (the "department") received a request for information relating to a specified case number. You claim that some of the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the information you submitted.

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 § 552.101.² This exception encompasses common-law privacy, which protects information that contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and is not of legitimate concern to the

¹Although you do not specifically raise section 552.130 in your request for this decision, you have marked information that the department seeks to withhold under that exception. Accordingly, we will address section 552.130, which is a mandatory exception that may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

²Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information.

public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of this test must be established. *Id.* at 681-82. Common-law privacy protects the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See *id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We conclude that some of the submitted information is intimate or embarrassing and not a matter of legitimate public interest. The department must withhold that information, which we have marked, under section 552.101 in conjunction with common-law privacy.

Section 552.108 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have marked the information that the department seeks to withhold under section 552.108. You state that the marked information pertains to a pending prosecution. Based on your representation, we conclude that section 552.1089a(1) is generally applicable to the marked information. 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).

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the marked information under section 552.108(a)(1).

Section 552.130 of the Government Code excepts from disclosure information relating to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

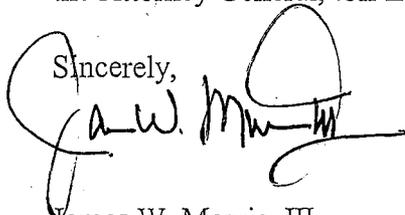
Gov't Code § 552.130(a)(1)-(3). We agree that the department must withhold the Texas driver's license, motor vehicle and personal identification information you have marked, as well as the additional information we have marked, under section 552.130.

In summary: (1) the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the department may withhold the information pertaining to the pending prosecution you have marked under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c); and (3) the marked Texas driver's license, motor vehicle and personal identification information must be withheld under section 552.130 of the Government Code. The rest of the submitted 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 362802

Enc: Submitted documents

c: Requestor
(w/o enclosures)