



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2009

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

OR2009-15637

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# 360393 (BPD PIR # 2009-27557).

The Baytown Police Department (the "department") received two requests for a specified police report. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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). 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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have highlighted in orange relates to a pending criminal investigation. Based upon this representation and our review, we conclude that the release of the information at issue 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. Thus, we agree the department may withhold the orange-highlighted information under section 552.108(a)(1) of the Government Code.¹

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

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. Section 552.101 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. *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 prongs of this test must be established. *See id.* at 681-82. 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 have marked information that is highly intimate or embarrassing and not of legitimate public concern. The department must withhold the marked information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. You have failed to demonstrate, however, how the remaining information you have marked is highly intimate or embarrassing and of no legitimate public concern. Accordingly, you may not withhold the remaining information you have marked under section 552.101 in conjunction with common-law privacy.

We note, however, the second requestor has a special right of access to the information we have marked under section 552.101 in conjunction with common-law privacy. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *See* Gov't Code § 552.023(a). Thus, this information may not be withheld from second requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. ORD 455 at 4. The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). In Open Records Decision No. 430 (1985), our office determined that the list of inmate visitors is protected by constitutional privacy because people have a First Amendment right to correspond with prisoners, and the release of that information

would threaten that right. We have marked inmate visitor information that the department must withhold under section 552.101 of the Government Code in conjunction with constitutional privacy. We note although the second requestor is the inmate whose visitor information is at issue, he does not have a right of access to this information under section 552.023 of the Government Code because the constitutional rights of another other party are also implicated. *See* ORD 430.

You claim the Texas motor vehicle record information you have highlighted in pink is excepted under section 552.130 of the Government Code. Section 552.130 of the Government Code excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. We conclude section 552.130 of the Government Code is applicable to the pink-highlighted Texas motor vehicle record information. We note, however, it appears that the first requestor is the insurance provider of the victim listed in the submitted incident report. Thus, this requestor may have a right of access to the Texas motor vehicle record information belonging to the victim as his authorized representative. *See id.* § 552.023(a); ORD 481 at 4. To the extent the first requestor has a right of access under section 552.023 to the pink-highlighted Texas motor vehicle record information belonging to the victim, the department must release this information to this requestor. However, the department must withhold the remaining pink-highlighted information from this requestor under section 552.130. To the extent the first requestor does not have a right of access under section 552.023, the department must withhold all of the pink-highlighted information from this requestor under section 552.130 of the Government Code.

We note the second requestor has a right of access to his own Texas motor vehicle record information, and it may not be withheld from him under section 552.130. *See* Gov't Code § 552.023. However, the department must withhold the remaining pink-highlighted Texas motor vehicle record information from this requestor under section 552.130 of the Government Code.

You claim that the partial social security numbers you have highlighted in green are excepted from disclosure under section 552.147 of the Government Code. This section provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Therefore, the department may withhold the green-highlighted social security numbers under section 552.147 of the Government Code.

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 from the first requestor. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with constitutional privacy. To the extent the first requestor is acting as the listed victim's authorized representative, the department must withhold only the pink-highlighted information under section 552.130 of the Government Code that does not pertain to the victim, and the remaining pink-highlighted information must be released to her. To the

extent the first requestor is not acting as the listed victim's authorized representative, the department must withhold all of the pink-highlighted information from her under section 552.130 of the Government Code. The department must withhold from the second requestor the pink-highlighted information that does not pertain to him pursuant to section 552.130 of the Government Code. The department may withhold the green-highlighted social security numbers under section 552.147 of the Government Code. The remaining information must be released.²

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 360393

Enc. Submitted documents

cc: Requestors (2)
(w/o enclosures)

²We note that because one, or possibly both, of the requestors has a special right of access to portions of the submitted information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.