



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2009

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2009-16415

Dear Ms. Sandoval-Walker:

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# 361129.

The El Paso Police Department (the "department") received a request for the supplemental reports related to case number 09-119021. You claim the submitted information is excepted from disclosure under sections 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)(1) 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 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). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987).*

You assert, and provide a letter from an assistant district attorney for the 34th Judicial District (the "district attorney") stating, the submitted information relates to a case for which charges against a specified individual are pending. However, our review of the submitted

information revealed that the specified individual is deceased. In response to a request from this office for additional information, you submitted a representation from the district attorney that the case against the specified individual will be declined because this individual is deceased, and that "the only reason the case is pending is because it is waiting to be declined." See Gov't Code § 552.303(c) (attorney general may give written notice to governmental body that additional information is necessary to render a decision). Thus the district attorney has failed to explain how release of the submitted information will interfere with a pending prosecution. Accordingly, this information may not be withheld under section 552.108(a)(1).

You assert some of the remaining information is excepted under section 552.130 of the Government Code, which 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. *Id.* § 552.130(a)(1), (2). We agree the department must withhold the Texas license plate and vehicle identification numbers you have marked, and the additional license plate number, vehicle identification numbers, driver's license numbers, and driver's license class designation we have marked, under section 552.130.

You assert the social security numbers in the submitted information are excepted from disclosure under section 552.147 of the Government Code, which provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act.¹ *Id.* § 552.147. We note you have marked a social security number of a deceased individual. Because section 552.147 pertains only to social security numbers of living persons, the decedent's social security number may not be withheld under section 552.147. The department may withhold the social security number of a living person in the remaining information under section 552.147.

We note the remaining information includes two El Paso Fire Department "patient care reports." 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 exception encompasses chapter 773 of the Health and Safety Code, which pertains to emergency medical services ("EMS") records. Section 773.091 of the Health and Safety Code provides in part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or

¹We note 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. *Id.* § 552.147(b).

maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

Health & Safety Code § 773.091(b)-(c). Section 773.091 further provides, however, that

[t]he privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Id. § 773.091(g). One of the submitted "patient care reports," which we have marked, is a record of the identity, evaluation, or treatment of a patient by EMS personnel. Thus, with the exception of the information subject to section 773.091(g), which is not confidential, the marked EMS record must be withheld under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. Because the second "patient care report" concerns an individual who was found to be deceased at the scene of the accident and was not treated by EMS personnel, this report is not confidential under section 773.091 of the Health and Safety Code.

We further note the remaining information contains an insurance policy number. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the department must withhold the insurance policy number we have marked under section 552.136.

In summary, the department must withhold the Texas license plate and vehicle identification numbers you have marked, and the additional license plate number, vehicle identification numbers, driver's license numbers, and driver's license class designation we have marked, under section 552.130 of the Government Code. The department may withhold the social security number of a living person pursuant to section 552.147 of the Government Code. With the exception of the information subject to section 773.091(g) of the Health and Safety Code, the EMS record we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

The department must withhold the insurance policy number we have marked pursuant to section 552.136 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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 361129

Enc. Submitted documents

c: Requestor
(w/o enclosures)