



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 8, 2010

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

OR2010-00370

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# 366826 (GCA09-0795).

The Garland Police Department (the "department") received a request for all documents pertaining to the specified arrest of a named individual. We note that you have redacted social security numbers from the submitted documents.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2009-15508 (2009). In that decision, we ruled that the department may withhold some of the information at issue under section 552.108(a)(1) of the Government Code and must withhold other information under section 552.130 of the Government Code. We further ruled that the department must release the remaining information at issue in that ruling. As we have no indication that the law, facts, or circumstances on which the prior ruling was based have

¹Section 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.

changed, the department may continue to rely on Open Records Letter No. 2009-15508 as a previous determination and withhold or release the same information in accordance with the previous determination.² See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We now address your arguments against disclosure of the remaining 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 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.* §§ 552.108(a)(1), 301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to an ongoing investigation. Based on your representation and our review of the submitted information, we conclude that 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. 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). Therefore, the department may withhold the information you have marked in red under section 552.108(a)(1) of the Government Code.³

Section 552.101 of the Government Code excepts from public 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 excepts from public disclosure private information about an individual if the information (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 or 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. 540 S.W.2d at 683. This office has found some kinds of medical information or information indicating disabilities or

²As we are able to make this determination, we need not address your arguments against the disclosure of this information.

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

specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (information pertaining to illness from severe emotional and job-related stress protected by common-law privacy), 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure).

Upon review, we find that portions of the submitted information are highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find that none of the remaining information you have marked implicates an individual's privacy interests for purposes of common-law privacy. Thus, no portion of the remaining information may be withheld on the basis of common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state." Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the remaining Texas driver's license number you have marked in green under section 552.130.⁴

In summary, (1) the department may continue to rely on Open Records Letter No. 2009-15508 as a previous determination and withhold or release the same information in accordance with the previous determination; (2) the department may withhold the information you have marked in red under section 552.108(a)(1) of the Government Code; (3) the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) the department must withhold the remaining information you have marked in green under section 552.130 of the Government Code. The remaining information must be released to the requestor.

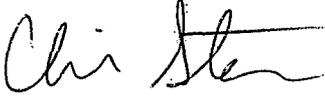
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

⁴We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in black ink, appearing to read "Chris Sterner". The signature is written in a cursive style with a horizontal line extending from the end.

Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 366826

Enc. Submitted documents

c: Requestor
(w/o enclosures)