



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 20, 2010

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

OR2010-00922

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# 368057.

The Baytown Police Department (the "department") received a request for a specific police report. You claim that portions of the submitted information are 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.

You inform us that the requested information was the subject of two previous requests for information, in response to which this office issued Open Records Letter No. 2009-15637 (2009). In that decision, we ruled that each requestor had a right of access to a portion of the information. However, this request involves a different requestor with no special right of access to any of the information. Thus, we find that the circumstances have changed, and the department may not continue to rely on Open Records Letter No. 2009-15637 as a previous determination in this instance. *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). Accordingly, we will address your arguments against the disclosure of the submitted information.

Initially, we will address your argument under section 552.108 of the Government Code, as it is potentially the broadest. Section 552.108(a) 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). 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.

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. This section encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types 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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are 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, the department may not withhold the remaining information you have marked under section 552.101 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.

You assert that the information you have marked in pink is excepted from disclosure 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. Gov't Code § 552.130(a)(1), (2). Upon review, we agree that the information you have marked in pink is confidential, and the department must withhold this information under section 552.130.<sup>1</sup>

You claim the partial social security numbers you have marked in green may be withheld pursuant to section 552.147 of the Government Code, which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.<sup>2</sup> Gov't Code § 552.147(a). Accordingly, the department may withhold the information you have marked in green pursuant to section 552.147 of the Government Code.

In summary, the department may withhold the information you have highlighted in orange 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 and constitutional privacy. The department must withhold the information you have highlighted in pink under section 552.130 of the Government Code. The department may withhold the information you have highlighted in green under section 552.147 of the Government Code. The remaining information must be released.

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<sup>1</sup> We 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 a Texas driver's license number and a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>2</sup> 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.

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](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,

A handwritten signature in black ink, appearing to read "Mack T. Harrison", with a long, sweeping horizontal stroke extending to the right.

Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/rl

Ref: ID# 368057

Enc. Submitted documents

c: Requestor  
(w/o enclosures)