



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2010

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

OR2010-01349

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# 368554.

The Baytown Police Department (the "department") received a request for a specified incident report, including the drug test that was taken. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have marked some of the submitted information as non-responsive. We agree the information you have marked is not responsive to the instant request. This decision does not address the public availability of the non-responsive information, and the department need not release that information in response to this request.

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 constitutional privacy. Constitutional privacy consists of two 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. Although the 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. Therefore the department must withhold the inmate visitor information you have marked in yellow under section 552.101 of the Government Code in conjunction with constitutional privacy.¹

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). You state the case remains pending and that release of the information marked in orange would interfere with the investigation of this crime. Based upon your representations and our review, we conclude the release of the information you have marked in orange 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 orange under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). Therefore, the department must withhold the Texas license plate numbers and license plate years you have marked in pink under section 552.130.²

¹As our ruling under constitutional privacy is dispositive, we need not address your argument against disclosure of this information under common-law privacy.

²We 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 license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the department must withhold the inmate visitor information you have marked in yellow under section 552.101 of the Government Code in conjunction with constitutional privacy. The department may withhold the information you have marked in orange under section 552.108(a)(1) of the Government Code. The department must withhold the Texas license plate numbers and license plate years you have marked in pink under section 552.130 of the Government Code. The remaining information must be released.³

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# 368554

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note you have marked partial social security numbers in green under section 552.147 of the Government Code. 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.