



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2010

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

OR2010-04638

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# 374524 (GCA 10-0034).

The Garland Police Department (the "department") received a request for a specified incident report. You state that the department released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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). This office has found 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) (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 some of the information you have marked in blue is highly intimate or embarrassing and of no legitimate public interest. However the remaining information you have marked in blue is not highly intimate or embarrassing and may not be withheld on the basis of common-law privacy. We have marked that information for release. We note that in this instance, the requestor is the representative of an insurance provider that may insure the individual whose private information is at issue. Thus, if this requestor is acting as the individual's authorized representative, he has a right of access to information pertaining to that individual that would ordinarily be confidential under section 552.101 in conjunction with common-law privacy. Section 552.023 of the Government Code 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); see also *id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or individual's authorized representative requests information concerning the individual). Thus, to the extent the requestor is the authorized representative of the individual whose private information is at issue, the department may not withhold the information at issue from this requestor on the basis of common-law privacy. Otherwise, with the exception of the information we have marked for release, the department must withhold the information you have marked in blue under section 552.101 of the Government Code in conjunction with common-law privacy.

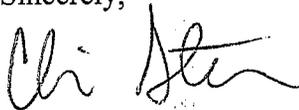
Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution 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 information at issue relates to an ongoing criminal investigation. Based on your representation and our review of the submitted information, we conclude that release of the information you have marked in red 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.

In summary, (1) if the requestor is not the authorized representative of the individual whose private information is at issue, then, with the exception of the information we have marked for release, the department must withhold the information you have marked in blue under section 552.101 of the Government Code in conjunction with common-law privacy; and (2) the department may withhold the information you have marked in red under section 552.108(a)(1) 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 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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 374524

Enc. Submitted documents

c: Requestor
(w/o enclosures)