



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 9, 2010

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

OR2010-05036

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# 375388.

The Baytown Police Department (the "department") received four requests from two individuals seeking report numbers 2010-2431 and 2010-2580. You state the department will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim the information you marked in the submitted reports is 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 552.108(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 offenses in both submitted reports are currently pending criminal prosecution. Based on this representation

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. *See* Gov't Code § 552.147(b).

and our review, we determine release of the information you marked under the law enforcement exception 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). Accordingly, the department may withhold the portions of the submitted incident reports you marked pursuant to section 552.108(a)(1) of the Government Code.

Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This exception encompasses the doctrine of common-law privacy, which protects information that (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The type 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. *Id.* at 683. This office has also 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) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

You have marked the information you claim is protected by common-law privacy. Some of the information you marked pertains to the suspect listed in the reports having a possible drug or alcohol addiction. We note the reports reflect the suspect was intoxicated or under the influence of drugs during the commission of at least one of the alleged crimes at issue. Although the suspect's possible addiction may be intimate or embarrassing, we find there is a legitimate public interest in this information because it relates to alleged criminal behavior. See *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). Thus, the information you marked regarding the suspect's possible addictions may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, we agree the remaining marked information consists of personal medical details or information that are highly intimate or embarrassing and not of legitimate public concern.

However, one of the requestors is the individual whose private information is at issue. Section 552.023(a) 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).

Thus, the requestor whose private information is at issue has a right of access to information that would ordinarily be withheld to protect his common-law privacy interests. *See id.*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Consequently, the information we marked may not be withheld from the requestor whose information is at issue under section 552.101 in conjunction with common-law privacy.

In summary, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code. The department must withhold the marked private information from the female requestor under section 552.101 of the Government Code in conjunction with common-law privacy, but must release this information to the male requestor as he has a right to his own private information under section 552.023 of the Government Code. The remaining information must be released to both requestors.

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,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a long horizontal flourish extending to the right.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 375388

Enc. Submitted documents

cc: Requestor
(w/o enclosures)