



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2010

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
321 John Sartain
Corpus Christi, Texas 78401

OR2010-06001

Dear Ms. Aguilar:

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# 377328.

The Corpus Christi Police Department (the "department") received a request for the incident reports pertaining to seventeen specified calls for service at a specific address. You state the department has provided some of the requested information to the requestor. You indicate the department has withheld, and will withhold, Texas driver's license numbers under section 552.130 of the Government Code pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009).¹ You claim portions of the submitted incident reports 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 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

¹The previous determination issued in ORD 684 authorizes all governmental bodies 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.

(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. Upon review, we agree the marked information is highly intimate or embarrassing and not of legitimate public concern. Thus, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim some of the remaining information, which you have marked, is protected under section 552.108 of the Government Code. Section 552.108(a)(1) 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 incident report numbers 0911040159, 0911040160, and 0912230024 relate to pending criminal investigations. You also advise us incident report numbers 0903260125 and 0910130144 relate to criminal investigations that are inactive pending additional leads. You state, however, the statutes of limitations have not run, and you indicate these investigations may be reactivated once additional leads are developed. Based on these representations, we conclude release of the information you have marked 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. 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 information you have marked in report numbers 0903260125, 0910130144, 0911040159, 0911040160, and 0912230024 under section 552.108(a)(1) of the Government Code.

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure

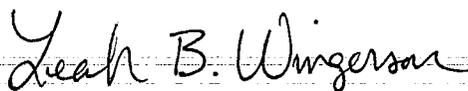
under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Pruitt*, 551 S.W.2d 706. You state incident report numbers 0904120083 and 0905080171 pertain to concluded criminal investigations that did not result in convictions or deferred adjudication. Therefore, the department may withhold the information you have marked in these reports under section 552.108(a)(2) of the Government Code.

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the marked information in report numbers 0903260125, 0910130144, 0911040159, 0911040160, and 0912230024 under section 552.108(a)(1) of the Government Code and in report numbers 0904120083 and 0905080171 under section 552.108(a)(2) of the Government Code. The remaining information must be released.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 377328

Enc. Submitted documents

c: Requestor
(w/o enclosures)