



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 5, 2010

Mr. Mack Reinwand
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2010-06485

Dear Mr. Reinwand:

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# 378605.

The Arlington Police Department (the "department") received a request for all records pertaining to the requestor. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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 requested information "is a pending and open record of a law enforcement agency." You have also provided us with a listing of all of the incident reports responsive to the request. On this list, you have only bracketed four of the listed incident reports and marked them as "pending." The remaining incident reports are marked as "exception," "same," "closed," "admin," or "dismissed." You do not explain how release of the remaining reports would interfere with the detection, investigation, or prosecution of particular criminal investigations or

prosecutions. Accordingly, we find you have only demonstrated incident report numbers 10-9263, 10-7738, 10-4121, and 10-3938 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., 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).~~ Therefore, section 552.108(a)(1) is applicable to incident report numbers 10-9263, 10-7738, 10-4121, and 10-3938.

We note that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. Therefore, with the exception of basic information, the department may withhold incident report numbers 10-9263, 10-7738, 10-4121, and 10-3938 pursuant to section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ Gov't Code § 552.101. Section 552.101 encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. The department must withhold the CHRI we have marked in incident report number 09-56702 under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.101 also 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). 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 the some kinds of medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). The information we have marked in incident report 09-72067 is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that some of the remaining information 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). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Therefore, the requestor has a right of access to her own Texas driver's license and motor vehicle record information. *Id.* § 552.023 (person has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests). The department must withhold the Texas driver's license numbers and motor vehicle record information not pertaining to the requestor, which we have marked, under section 552.130 of the Government Code.²

In summary, with the exception of basic information, the department may withhold incident report numbers 10-9263, 10-7738, 10-4121, and 10-3938 under section 552.108(a)(1) of the Government Code. The department must withhold the CHRI we have marked in incident report number 09-56702 under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The department must withhold the information we have marked in incident report 09-72067 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold

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 Texas driver's license numbers and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

the information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 378605

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

³We note the remaining information contains social security numbers. 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. *See* Gov't Code § 552.147. However, the requestor has a right of access to her own social security number and it may not be withheld from her on this basis. *See id.* § 552.023(a). Further, we note that because the requestor has a special right of access to information that would otherwise be confidential in this instance, the department must again seek a decision from this office if it receives another request for the same information from a different requestor.