



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2010

Mr. Samuel D. Hawk
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2010-07320

Dear Mr. Hawk:

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# 380037 (DPD Request No. 2010-2231).

The Dallas Police Department (the "department") received a request for twenty-one categories of information pertaining to a specified address for a specified time period. You state the department has released some of the requested information. You claim that some of the submitted information 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.¹

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date the request was received. The department need not release nonresponsive information in response to this request, and this ruling will not address that information.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 the common-law right to privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See 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 met. *Id.* at 681-82. You have marked the identifying information of undercover officers as confidential pursuant to common-law privacy and “special circumstances.” You argue release of this information “would jeopardize the safety of [department] officers and place their lives at risk,” and, therefore special circumstances exist under common-law privacy to withhold the identities of these officers. However, the Third Court of Appeals recently ruled the “special circumstances” exception found in past Attorney General Open Records Decisions directly conflicts with Texas Supreme Court precedent regarding common-law privacy. *Tex. Dep’t of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 287 S.W. 3d 390 (Tex. App.—Austin 2009, pet. filed). The court of appeals ruled the two-part test set out in *Industrial Foundation* is the “sole criteria” for determining whether information can be withheld under common-law privacy. *Id.*; *see also Indus. Found.*, 540 S.W.2d at 686. Upon review of the information at issue, we find the information you have marked is not intimate or embarrassing. As this information fails to meet the first prong of the *Industrial Foundation* test for privacy, we find the information at issue is not confidential under common-law privacy and the department may not withhold it under section 552.101.

The Eighty-first Legislature recently enacted section 552.151 of the Government Code which relates to a public employee’s or officer’s safety. This section provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov’t Code § 552.151. In this instance, you explain release of the identifying information of undercover officers would likely cause officers to face a threat of imminent physical danger. Based on your representations and our review, we find the department has demonstrated release of the identifying information of undercover officers would subject the officers to a substantial threat of physical harm. Accordingly, we have marked the identifying information of undercover officers that must be withheld under section 552.151 of the Government Code.²

²As our ruling is dispositive, we need not address your argument to withhold this information under section 552.108 of the Government Code.

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 that the remaining information you have marked relates to a pending criminal investigation. Based upon this representation, we conclude that release of the marked information 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, we conclude that the department may withhold the remaining information you marked under section 552.108(a)(1).

We note that portions of the remaining information are subject to section 552.130 of the Government Code.³ Section 552.130 excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.”⁴ Gov’t Code § 552.130(a)(1), (2). Accordingly, the department must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.151 of the Government Code. The department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.⁵

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.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴We 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 under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁵We note that the remaining information contains a social security number. 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.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID#380037

Enc. Submitted documents

c: Requestor
(w/o enclosures)