



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 11, 2010

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

Attorney General of Texas

OR2010-08545

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# 382330.

The Baytown Police Department (the "department") received three separate requests from the same requestor for police report numbers 2009-12338, 2009-15822, and 2010-7031. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, 552.147, and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, 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 have marked portions of reports 2009-12338 and 2010-7031 under section 552.108 of the Government Code. You state report 2009-12338 pertains to a pending criminal investigation and report 2010-7031 pertains to a pending criminal prosecution. Based upon your representations, we conclude the release of this 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). Thus, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.¹

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 of privacy, which protects information if it (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. In addition, 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) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we agree the portions of the remaining information you have marked under section 552.101 are intimate or embarrassing and of no legitimate public interest. Furthermore, we find the additional information we have marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code 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.” Gov’t Code § 552.130. Upon review, we agree the department must withhold the information you have marked under section 552.130 of the Government Code.²

You have marked portions of the remaining information you assert are subject to section 552.147 of the Government Code. Section 552.147 provides, “[t]he social security

¹As our ruling is dispositive, we do not address your remaining arguments against disclosure of this information.

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 licenses and motor vehicle information under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

number of a living person is excepted from" required public disclosure under the Act.³ Gov't Code § 552.147. Therefore, the department may withhold the social security numbers you have marked in green under section 552.147 of the Government Code.

Finally, section 552.151 of the Government Code 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.

Id. § 552.151. You inform us that the information you have marked under section 552.151 relates to undercover police officers. You represent that release of this information would subject these undercover officers to a "substantial threat of physical harm." Based on your representation, we conclude you have demonstrated that release of the information you have marked would subject the officers to a substantial threat of physical harm. Therefore, we conclude the department must withhold the information you have marked under section 552.151 of the Government Code.

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 information you have marked, as well as the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you marked under section 552.130 of the Government Code. The department may withhold the information you marked under section 552.147 of the Government Code. The department must withhold the information you marked under section 552.151 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

³Section 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).

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 "James McGuire". The signature is fluid and cursive, with a long horizontal stroke at the end.

James McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 382330

Enc. Submitted documents

c: Requestor
(w/o enclosures)
