



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2010

Mr. Jose Hernandez
Records Clerk
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2010-09901

Dear Mr. Hernandez:

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# 385494 (Reference ID# 9616).

The Edinburg Police Department (the "department") received a request for case number 10-19489. You claim portions of the submitted information are excepted from disclosure under sections 552.108, 552.130, and 552.147 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types 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

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).

disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that 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 find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must generally withhold this information pursuant to section 552.101 in conjunction with common-law privacy.

However, we note the requestor may be the parent of the female arrestee to whom the private information pertains. A person has a special right of access to private information concerning herself under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or his authorized representative requests information concerning individual). Therefore, if the requestor is the parent of the female arrestee, then the department may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy. On the other hand, if the requestor is not the parent of the female arrestee, then the department must withhold the marked information under section 552.101 in conjunction with common-law privacy.

You claim portions of the submitted information, which you have marked, are excepted from disclosure under section 552.108(a)(1) 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate the information at issue relates to a pending criminal investigation. Based on your representation and our review, we conclude section 552.108(a)(1) is applicable to the information at issue. *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).

However, we note 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*. *See* 531 S.W.2d at 186-87. Basic information includes, among other items, a detailed description of the offense and the property involved. *See id.* at 179-80, 185-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). The department must generally release basic offense and arrest information, including the property involved and a detailed description of the offense, even if the information does not

literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-88; ORD 127 at 3-4. Therefore, with the exception of basic information, the department may withhold the information you have marked under section 552.108(a)(1).

You claim some of the remaining information is subject to section 552.130 of the Government Code, which excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). We note section 552.130 does not make information regarding the state of issuance confidential because in order for section 552.130 to be applicable, the motor vehicle information must be issued by an agency of the State of Texas. This information, which we have marked for release, may not be withheld under section 552.130. Additionally, we note this exception also protects personal privacy. Therefore, if the requestor is the parent of the female arrestee, the department may not withhold information pertaining to that individual under section 552.130. *See id.* § 552.023(a). However, if the requestor is not the parent of the female arrestee, the department must withhold her driver's license and vehicle information under section 552.130. In either case, with the exception of the information we have marked for release, the department must withhold the remaining information you and we have marked under section 552.130.²

Section 552.147 of the Government Code provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Section 552.147 is also based on privacy concerns. Accordingly, pursuant to section 552.023, if the requestor is the parent of the female arrestee, then the department may not withhold his daughter's social security number from him. *See id.* § 552.023(b). If the requestor is not the father of the female arrestee, then the department may withhold the female arrestee's social security number you have marked under section 552.147.³

In summary, if the requestor is not the female arrestee's father, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Except for basic information, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. Except for the information we have marked for release, the department must withhold the information you and we have marked under section 552.130 of the Government Code. However, if the requestor is the father of the female arrestee, the department may not

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

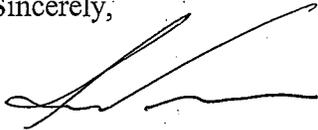
³We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

withhold the information you have marked under section 552.130 that pertains to the female arrestee. The department may only withhold the female arrestee's social security number under section 552.147 of the Government Code if the requestor is not her father.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 385494

Enc. Submitted documents

c: Requestor
(w/o enclosures)