



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2010

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

OR2010-10712

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# 387103.

The Baytown Police Department (the "department") received a request for a specified police report. You state you will redact social security numbers and partial social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.151 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. Section 552.101 of the Government Code 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). 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

¹Section 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(b).

emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we agree the information you have marked is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the department must generally withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, that the requestor may be the authorized representative of the individual whose information is at issue in the submitted information. If this requestor is acting as the individual at issue's authorized representative, she has a right of access to the individual's marked information pursuant to section 552.023. *See* Gov't Code, § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). To the extent the requestor has a right of access under section 552.023 to the individual at issue's marked information, the department must release the marked information to this requestor. To the extent this requestor is not the authorized representative of the individual whose information is at issue, she does not have a right of access under section 552.023 to the marked information, and the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

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). 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, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal prosecution. Based upon this representation and our review, we conclude the 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. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d. Thus, we agree the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.²

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.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Gov't Code § 552.151. You seek to withhold the names and identification numbers of undercover officers you have marked in the remaining information. 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.

We note the remaining information contains a Texas license plate number subject to section 552.130 of the Government Code and an insurance policy number subject to section 552.136 of the Government Code.³ Section 552.130 provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). Accordingly, the department must generally withhold the Texas license plate number we have marked under section 552.130 of the Government Code. However, section 552.130 is based on privacy principles. Thus, if the requestor is acting as the authorized representative for the individual whose license plate number we marked, then the requestor has a right of access to the individual's license plate number. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). Thus, if the requestor is acting as the individual at issue's authorized representative, the marked license plate number must be released to this requestor. If the requestor is not acting as the individual at issue's authorized representative, the department must withhold the Texas license plate number we have marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b). The department must generally withhold the insurance policy number we have marked under section 552.136. However, section 552.136 is also based on privacy principles. As noted above, the requestor may be the authorized representative of the individual whose insurance policy number is at issue. Thus, if the requestor is acting as the individual at issue's authorized representative, the marked insurance policy number must be released to this requestor. If the requestor is not acting as the individual at issue's authorized representative, the department must withhold the insurance policy number we have marked under section 552.136 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, unless the requestor is acting as the individual at issues's authorized representative. The department may withhold the information you have marked under section 552.108 of the

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

Government Code. The department must withhold the information you have marked under section 552.151 of the Government Code. The department must withhold the Texas license plate number we have marked under section 552.130 of the Government Code and the insurance policy number we have marked under section 552.136 of the Government Code, unless the requestor is acting as the individual at issue's authorized representative.⁴ The remaining information must be released to the requestor.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.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 387103

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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 license plate numbers under section 552.130 of the Government Code and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

⁵We note that the requestor may have a special right of access to some of the information being released under section 552.023 of the Government Code. Such information is confidential to the general public. Thus, if the department receives another request for this information from a different requestor, the department should again seek a ruling from this office.