



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 20, 2010

Mr. Robert Henneke  
Kerr County Attorney  
County Courthouse, Suite BA-103  
700 Main Street  
Kerrville, Texas 78028

OR2010-10762

Dear Mr. Henneke:

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# 387273.

The Kerr County Attorney's Office (the "county attorney") received a request for all information related to a specified incident involving a "hot check." You claim that the submitted 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. We have also considered comments submitted by the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that most of the submitted information was the subject of a previous request for information received by the county attorney. You contend that the previous request "was not an open records request" under the Act. However, in response to that written correspondence from the requestor, the county attorney informed this office that the county attorney had "received an open records request," sought a decision from this office, and submitted responsive information for our review. Accordingly, we consider the requestor's initial request to be a valid request under the Act. As a result of the county attorney's request for a decision, this office issued Open Records Letter No. 2010-05745 (2010). In that ruling, we held that the county attorney may withhold the submitted check under section 552.108(a)(1) of the Government Code but must release any remaining responsive

information that existed on the date the county attorney received the request. With respect to most of the information at issue in Open Records Letter No. 2010-05745, we have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based. We therefore conclude that the county attorney must continue to rely on Open Records Letter No. 2010-05745 as a previous determination, and withhold the submitted check, and must release the remaining responsive information, which we have marked, in accordance with that ruling, with the following exception.<sup>1</sup> See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, with respect to a portion of the information previously ruled on, we find that the law, facts, and circumstances on which the previous ruling is based have changed. Thus, you may not rely on Open Records Letter No. 2010-05745 with regard to that information, which we will now address.

We note that portions of the information at issue are excepted from disclosure by common-law privacy.<sup>2</sup> Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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 conclude that a portion of the submitted information is highly intimate or embarrassing and of no legitimate public concern. Thus, the county attorney must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

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<sup>1</sup>As our ruling is dispositive of this information, we need not address your argument against its disclosure.

<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Next, we note a portion of the information at issue is subject to section 552.130 of the Government Code. This section excepts from disclosure information that relates to a motor vehicle operator's license or driver's license issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). The county attorney must withhold the information we have marked pursuant to section 552.130 of the Government Code.<sup>3</sup>

We will next address the remaining information that was created after the date the county attorney received the previous request and, thus, was not ruled upon in Open Records Letter No. 2010-05745. 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(a)(1) 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 relates to an ongoing criminal investigation. Based upon your representation and our review, we conclude the release of the remaining 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, the county attorney may withhold the remaining information, which we have marked, under section 552.108(a)(1) of the Government Code.

In summary, the county attorney must continue to rely on Open Records Letter No. 2010-05745 as a previous determination and withhold or release most of the information at issue in accordance with that ruling. The county attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, and the information we have marked under section 552.130 of the Government Code. The county attorney may withhold the information we have marked under section 552.108(a)(1) of the Government Code.

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

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<sup>3</sup>We 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 a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](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,

A handwritten signature in black ink, appearing to read "Jennifer Burnett", with a long horizontal flourish extending to the right.

Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 387273

Enc. Submitted documents

c: Requestor  
(w/o enclosures)