



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2010

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2010-11948

Dear Mr. Mann:

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#389605 (GCA 10-0425, GCA10-0442).

The Garland Police Department (the "department") received a request for incident report #2010R010660. The department received a subsequent request for the companion report, #2010R010559, which pertains to the same incident. You state you have released some of the responsive information to the requestors. You claim that portions of the submitted information are 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.

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 this exception is applicable to the information at issue. *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 information you have marked in the submitted reports relates to a pending criminal investigation and prosecution. Based on this representation, 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 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).

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 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (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. *See 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). You seek to withhold certain information in report #2010R010660 from the first requestor. Upon review, we agree the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the department must withhold this marked information from the first requestor pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department may withhold the information you have marked under section 552.108 of the Government Code. The department must withhold the information you have marked in report #2010R010660 from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.¹

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.

¹We note that the second requestor has a special right of access to some of the information being released in this instance. *See Gov't Code § 552.023(a)* (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person's privacy interests). Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/jb

Ref: ID#389605

Enc. Submitted documents

c: Requestor
(w/o enclosures)