



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2010

Ms. Candice De La Garza
Assistant City Attorney
City of Houston Legal Department
P.O. Box 368
Houston, Texas 77001-0368

OR2010-13162

Dear Ms. De La Garza:

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# 395248 (Houston PIR # 17436).

The City of Houston (the "city") received a request for information pertaining to a specified incident. You state some of the requested information has been released, but claim 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).

The submitted information consists of incident report no. 01965310, and the requestor is the father of the complainant in that report. The requestor has submitted a copy of correspondence dated May 14, 2010, from the city's Police Department (the "department") indicating the department has released this incident report to the complainant's attorney in its entirety. Section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See* Gov't Code 552.007; Open Records Decision Nos. 518 at 3 (1989), 400 at 2 (1983). Section 552.108 of the Government Code only protects the interests of a governmental body and is not designed to protect the interests of private parties. *See*

Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions are intended to protect only the interests of governmental body as distinct from exceptions intended to protect information deemed confidential by law or interests of third parties). Section 552.108, thus, is a discretionary exception under the Act and does not make information confidential under law or expressly prohibit its release for purposes of section 552.007. *See* ORD No. 177 (statutory predecessor to section 552.108 subject to waiver). Accordingly, pursuant to section 552.007, if the city has previously released the submitted information, then the city may not now withhold the information under section 552.108. If, however, the city has not previously released the submitted information, we must address the city's arguments under section 552.108.

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." 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* Gov't Code §§ 552.108(a)(1), 552.301(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 investigation. Based on this representation, 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. 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).

However, 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*. Thus, if the city has not previously released the submitted information, then the city may withhold the submitted information under section 552.108(a)(1), with the exception of the basic front-page offense and arrest information. As discussed above, however, if the city has previously released the submitted information, then, pursuant to section 552.007, it may not withhold the submitted information under section 552.108.

We note the submitted documents contain information pertaining to the complainant that is subject to sections 552.101 and 552.130 of the Government Code. Sections 552.101 and 552.130 make information confidential by law for purposes of section 552.007. *See* Gov't Code § 552.007(a). Accordingly, if the city previously released the submitted information, we must address the applicability of sections 552.101 and 552.130 to it.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). The city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy, to the extent it is not otherwise excepted under section 552.108 of the Government Code.¹

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The city must withhold the Texas motor vehicle record information we have marked under section 552.130, to the extent it is not otherwise excepted under section 552.108 of the Government Code.²

To conclude, if the city has not previously released the submitted information, then it may withhold the submitted information under section 552.108 of the Government Code, with the exception of basic information. If, however, the city has previously released the submitted information, then the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and

¹We note the requestor has a right of access to information in the submitted documents that otherwise would be confidential under common-law privacy. *See* Gov't Code § 552.023(a) ("a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the city must again seek a decision from this office if it receives a request for this information from a different requestor.

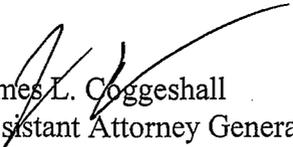
²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general opinion.

under section 552.130 of the Government Code, but it must release the remaining information pursuant to section 552.007 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 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tp

Ref: ID# 395248

Enc. Submitted documents

c: Requestor
(w/o enclosures)