



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 1, 2010

Ms. Terri Bradley  
Records Division  
City of Rosenberg  
2120 Fourth Street  
Rosenberg, Texas 77471

OR2010-13328

Dear Ms. Bradley:

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# 392381.

The Rosenberg Police Department (the "department") received a request for 15 specified reports. You state the department has released some of the requested information. You claim the submitted reports 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.

You indicate you seek to withhold report number 03-516 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. 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 doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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 disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also 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 have not submitted any arguments explaining how the information in report number 03-516 is private. Upon review, however, we find portions of report number 03-516, which we marked, are highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we marked in report number 03-516 under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information in this report may not be withheld under 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). 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(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 03-24833 and 07-5286 pertain to open and active investigations. We note, however, report number 03-24833 pertains to an alleged forgery that occurred on August 22, 2003 and report number 07-5286 pertains to an alleged theft that occurred on February 19, 2007. The statute of limitations for the types of offenses described in these reports is two years. *See* Penal Code §§ 31.03(e)(2)(A) (theft of property valued \$50 or more but less than \$500 is misdemeanor), 32.21(c) (with certain exceptions, forgery is misdemeanor); Crim. Proc. Code art. 12.02 (indictment for misdemeanor may be presented within two years from date of commission of offense, and not afterward). More than two years have elapsed since the events giving rise to the investigations in report numbers 03-24833 and 07-5286, and you have not informed this office any criminal charges were filed within the limitations period. Furthermore, you have not otherwise explained how release of these reports would interfere with the detection, investigation, or prosecution of crime. Thus, report numbers 03-24833 and 07-5286 may not be withheld under section 552.108(a)(1) of the Government Code. Additionally, although you have marked report number 03-516 under section 552.108(a)(1), you have not submitted any arguments explaining how section 552.108(a)(1) applies to the remaining information in this report. Therefore, this information may not be withheld under section 552.108(a)(1).

We note a portion of the remaining information in report number 03-24833 is subject to section 552.136 of the Government Code.<sup>1</sup> Section 552.136 states “[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.” Gov’t Code § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Upon review, we conclude the account number we marked must be withheld under section 552.136.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we marked under section 552.136 of the Government Code. The remaining information must be released.<sup>2</sup>

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](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,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/em

Ref: ID# 392381

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the remaining information contains a social security number. 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. Gov’t Code § 552.147(b).