



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2010

Mr. Jon Thatcher
Wolfe, Tidwell & McCoy, LLP
2591 Dallas Parkway, Suite 205
Frisco, Texas 75034

OR2010-13519

Dear Mr. Thatcher:

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# 392785 (C03029PIR20100618-01).

The Anna Police Department (the "department"), which you represent, received a request for all reports pertaining to two specified incidents. You state that the department has released or will release some of the requested information. You further state that the department will redact social security numbers from the requested documents.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 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. This section 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

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 under the Act.

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. You claim that the “identifying information of witnesses and victims in a criminal case” is subject to common-law privacy. Upon review, however, we conclude that you have failed to establish that the information you have marked is highly intimate or embarrassing. Further, we note that there is generally a legitimate public interest in the details of a criminal investigation. *See id.* at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case); *cf.* Open Records Decision Nos. 611 at 1 (1992) (family violence is a crime, not a private matter), 409 at 2 (1984) (identity of burglary victim not protected by common-law privacy). Thus, the information you have marked “Exception 1” may not be withheld under section 552.101 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). A governmental body that claims an exception to disclosure under 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); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have provided this office with an affidavit from the department’s chief indicating that the information at issue relates to a pending criminal prosecution. Based on this representation and our review of the submitted information, we conclude that 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 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold the information you have marked “Exception 2” under section 552.108(a)(1) of the Government Code.²

Section 552.130 of the Government Code excepts from disclosure information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” Gov’t Code § 552.130(a)(1). Accordingly, the department must withhold the Texas driver’s license number you have marked under section 552.130.³

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

³We 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 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, (1) the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code; and (2) the department must withhold the information you have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 392785

Enc. Submitted documents

c: Requestor
(w/o enclosures)