



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2010

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2010-14754

Dear Mr. Alicie:

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# 395133.

The Baytown Police Department (the "department") received a request for a specified police report. You state you will redact partial social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.151 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 information protected by other statutes. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. *See* Gov't Code § 411.083(a); Open Records Decision No. 565 (1990). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* ORD 565. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government

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. *See* Gov't Code § 552.147(b).

Code. See Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. See generally *id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with Government Code chapter 411, subchapter F. Upon review, we find the information you marked under section 552.101 consists of CHRI that is confidential under chapter 411. Accordingly, the department must withhold the information you marked under section 552.101 in conjunction with chapter 411 and federal law.

Section 552.101 of the Government Code also 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. See *id.* at 681-82. This office has found 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 the information we marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold the information we marked 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). Generally, 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, .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 prosecution. Based upon this representation and our review, we conclude the release of the information you 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. Thus, we agree the department may withhold the information you marked under section 552.108(a)(1).²

²As our ruling is dispositive, we do not address your remaining arguments against disclosure of this information.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). Accordingly, we the department must withhold the Texas driver's license number we marked under section 552.130.

Section 552.136(b) of the Government Code provides that "[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." *Id.* § 552.136(b). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Thus, the department must withhold the insurance policy number you marked under section 552.136.

Section 552.151 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.151. You seek to withhold the names and identification numbers of undercover officers you marked in the remaining information. You represent release of this information would subject these undercover officers to a "substantial threat of physical harm." Based on your representation, we conclude you have demonstrated release of the information you marked would subject the officers to a substantial threat of physical harm. Therefore, we conclude the department must withhold the information you marked under section 552.151.

In summary, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the information you marked under section 552.108(a)(1) of the Government Code. The department must also withhold the (1) Texas driver's license number we marked under section 552.130 of the Government Code and (2) the insurance policy number you marked under section 552.136 of the Government Code.³ Additionally, the department must withhold the names and identification numbers of undercover officers

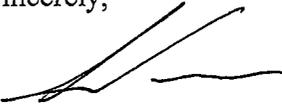
³This office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code and an insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

you marked under section 552.151 of the Government Code. The remaining information must be released.⁴

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 395133

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the information being released contains information to which the requestor has a special right of access. See Gov't Code § 552.023(a) (person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.