



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 5, 2010

Ms. Ylise Janssen  
Senior School Law Attorney  
Office of the General Counsel  
Austin Independent School District  
1111 West Sixth Street  
Austin, Texas 78703

OR2010-15172

Dear Ms. Janssen:

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# 394132.

The Austin Independent School District (the "district") received a request for information concerning the requestor's client, the district's proposed termination of the requestor's client, and a specified incident that occurred on May 3, 2010. You state the district has made some of the requested documents available to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information. We have also received and 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).

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with section 552.108 of the Government Code, section 552.101 does not encompass other exceptions in the Act. Furthermore, you have not submitted arguments explaining how section 552.101 otherwise applies to the submitted information; therefore, we presume you have withdrawn any arguments under that exception. *See* Gov't Code §§ 552.301, .302.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” *Id.* § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. 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 the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(2) is not applicable to records of an internal affairs investigation that is purely administrative in nature and did not involve the criminal investigation or prosecution of an officer’s alleged misconduct. *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied); *see City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.) (section 552.108 not applicable to information police department holds as employer). You assert the requested information relates to a criminal investigation that did not result in conviction or deferred adjudication. Upon review, most of the submitted records reflect they were generated as part of an internal investigation conducted by the district’s police department that was purely administrative in nature. You do not provide any arguments explaining how the internal investigation resulted in a criminal investigation or prosecution of the investigated officer’s conduct. Accordingly, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to most of the submitted records, and the district may not withhold them based on that exception. However, we have marked the records that were created as part of the criminal investigation of the specified incident, which gave rise to the internal investigation at issue. Based on your representation, we agree section 552.108(a)(2) of the Government Code is applicable to this information.

We note that 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing 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). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In this instance, the information subject to section 552.108 includes computer-assisted dispatch (“CAD”) reports. In Open Records Decision No. 649 (1996), this office concluded that information contained in a CAD report is substantially the same as basic information. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*; thus, such information is generally public). Therefore, with the exception of basic information that must be released under section 552.108(c), the district may withhold the information we marked under section 552.108(a)(2) of the Government Code.

However, the remaining information contains information subject to section 552.101 of the Government Code.<sup>2</sup> Section 552.101 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 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 satisfied. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision Nos. 600 at 9-10 (1992), 523 at 3-4 (1989). We have marked vehicle lien information in the remaining information, the release of which is not of legitimate public interest in this instance. Accordingly, the district must withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.<sup>3</sup> Gov’t Code § 552.117(a)(2). We have marked the home address and telephone number of an officer with the district’s police department. The district must withhold this marked information under section 552.117(a)(2) of the Government Code.

The remaining information also includes Texas motor vehicle record information subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, registration, or personal identification document issued by a Texas agency is excepted from public release. *Id.* § 552.130(a). Therefore, the district must withhold the Texas motor vehicle record information we have marked in the submitted documents, as well as the information we have indicated on the submitted audio and video recordings, under section 552.130 of the Government Code.<sup>4</sup>

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>“Peace officer” is defined by Article 2.12 of the Texas Code of Criminal Procedure.

<sup>4</sup>We 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 and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, with the exception of basic information, the district may withhold the information we marked under section 552.108(a)(2) of the Government Code. The district must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy, section 552.117(a)(2) of the Government Code, and section 552.130 of the Government Code. The remaining information must be released.<sup>5</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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tp

Ref: ID# 394132

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup>The remaining information includes social security numbers. 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. *See* Gov't Code § 552.147(b). The requestor has a right of access, however, to his client's social security number. *See generally id.* § 552.023(a) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests).