



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2010

Ms. Paula M. Rosales
Assistant District Attorney
Dallas County District Attorney's Office
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207

OR2010-15731

Dear Ms. Rosales:

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# 396901.

The Dallas County District Attorney's Office (the "district attorney") received a request for information pertaining to cause number MA03-25823, cause number MA10-45715, and service report number 730335T.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.1325 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you did not submit information responsive to the portion of the request seeking information related to service report number 730335T. To the extent any

¹You state the district attorney sought and received clarification from the requestor regarding this request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²Although you cite to section 552.111 of the Government Code, you have provided no arguments in support of withholding the submitted information under this exception. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Thus, you have waived your claim under section 552.111.

information responsive to this portion of the request existed on the date the district attorney received the request, we assume the district attorney has released it. If the district attorney has not released any such information, it must do so at this time. See Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note a portion of the submitted information is subject to section 552.022(a)(1) of the Government Code, which provides:

the following categories of information are public information and not excepted from required disclosure under [the Act] unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information pertaining to cause number MA10-45715 consists of a completed police report that is subject to section 552.022(a)(1). Thus, the district attorney may only withhold this information if it is excepted from disclosure under section 552.108 or expressly confidential under "other law." Although you assert this information is excepted under section 552.103 of the Government Code, this section is a discretionary exception to public disclosure that protects a governmental body's interests and may be waived. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). As such, section 552.103 is not "other law" that makes information confidential for purposes of section 552.022. Therefore, none of the submitted information pertaining to cause number MA10-45715 may be withheld under section 552.103 of the Government Code. However, sections 552.101, 552.130, and 552.1325 are mandatory exceptions to disclosure, and, thus, are "other law" for purposes of section 552.022. Therefore, we will consider your claims under sections 552.101, 552.108, 552.130, and 552.1325 of the Government Code for the information subject to section 552.022, along with the remaining information.

You claim portions of the submitted information are excepted under section 552.108 of the Government Code. Section 552.108 provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). Section 552.108 protects certain specific types of law enforcement information. Sections 552.108(a)(4) and 552.108(b)(3) are applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state. *Id.* § 552.108(a)(4), (b)(3). 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 that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

The information at issue consists of police department records pertaining to cause numbers MA10-45715 and MA03-25823. You state “[s]ome of the information (i.e. handwritten notes) . . . is likely prosecutorial work product[.]” (emphasis added). However, you do not specify which portions of this information, if any, were actually “prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation.” *See* Gov't Code § 552.108(a)(4)(A), (b)(3)(A). Likewise, you have not demonstrated that any of the submitted information “represents the mental impressions or legal reasoning of an attorney representing the state.” *Id.* § 552.108(a)(4)(B), (b)(3)(B). Thus, we find you

have not shown how any of this information actually consists of prosecutorial work product. *See id.* § 552.301(e)(1)(A), (e)(2) (governmental body must label copy of requested information to indicate which exceptions apply to which parts of the copy). Therefore, as you have not established that the information at issue falls within the scope of either section 552.108(a)(4) or section 552.108(b)(3), we conclude that the district attorney may not withhold any of this information under section 552.108 of the Government Code.

You also raise section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses the doctrines of common-law and constitutional privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types 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. *See id.* at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first type protects an individual’s autonomy within “zones of privacy,” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)).

Upon review, we find that none of the submitted information is highly intimate or embarrassing. Thus, the district attorney may not withhold any of the information at issue under section 552.101 in conjunction with common-law privacy. Additionally, you have not provided any arguments explaining how any portion of the submitted information falls within the zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Therefore, the district attorney may not withhold any of the information at issue under section 552.101 on the basis of constitutional privacy.

You generally assert the identifying information of victims and witnesses in the submitted information is excepted under section 552.1325 of the Government Code and section 552.101 in conjunction with section 508.313 of the Government Code.

Section 508.313 makes confidential certain information maintained by the Texas Department of Criminal Justice's Board of Pardons and Paroles pertaining to parolees and releasees, while section 552.1325 makes confidential certain victim-identifying information contained in or used in preparing a victim impact statement. You provide no arguments explaining how these sections apply to the information at issue. *See* Gov't Code § 552.301(e)(1)(A). Because you have not explained, and we are unable to discern, how either of these provisions applies to the information at issue, we find you have failed to demonstrate the applicability of sections 508.313 and 552.1325 to this information, and no information may be withheld on those bases.

You also claim the submitted information contains Texas motor vehicle record information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a Texas motor vehicle driver's license or permit and a Texas motor vehicle title or registration. *Id.* § 552.130(a). Upon review, we have marked the Texas driver's license and identification numbers in the submitted information. The district attorney must withhold the information we marked under section 552.130 of the Government Code.³

Finally, you assert the remaining information contains social security numbers. Section 552.147 governs the release of social security numbers under the Act and provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Therefore, the district attorney may withhold the social security numbers in the remaining information under section 552.147 of the Government Code.⁴

In summary, the district attorney must withhold the information we marked under section 552.130 of the Government Code. The district attorney may withhold the social security numbers in the remaining information under section 552.147 of the Government Code. The remaining submitted information must be released.

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.

³Open Records Decision No. 684 (2009) is 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.

⁴We note that 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).

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,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a long, sweeping underline.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 396901

Enc. Submitted documents

c: Requestor
(w/o enclosures)