



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2010

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

OR2010-15786

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# 397090.

The Baytown Police Department (the "department") received two requests from different requestors for a specified incident report. You state the department will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You have marked information that you argue is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) 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 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.*

¹We 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.

§§ 552.108(a)(1), .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 investigation. Based on this representation, we conclude the 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.*, 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 under section 552.108(a)(1) of the Government Code.²

You claim some of the remaining information is excepted under 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.” Gov't Code § 552.101. This section 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). 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 agree that the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information you have marked, as well as the additional information we have marked, under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(2). The Texas motor vehicle record information that you have marked, as well as the additional information we have marked, falls within the scope of section 552.130. We note section 552.130 protects personal privacy. You acknowledge the second requestor has a right of access to her own Texas motor vehicle record information under section 552.023 of the Government Code.³ *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). However, the remaining Texas motor vehicle record information marked under section 552.130 must be withheld from the second requestor. We note the first requestor appears to represent the insurance provider of the owner of the remaining vehicle listed in

²As our ruling is dispositive, we need not address your remaining arguments for this information.

³Section 552.023 provides in part that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov't Code § 552.023(a).

the submitted information. Thus, if the first requestor represents the insurer of the owner of this vehicle, then the first requestor has a right of access to that information as the vehicle owner's authorized representative. *See* Gov't Code § 552.023. Accordingly, if the first requestor is the authorized representative of the remaining vehicle owner, then the marked Texas motor vehicle record information pertaining to that vehicle owner may not be withheld from the first requestor under section 552.130. If the first requestor is not the authorized representative of that vehicle owner, then the department must withhold all of the marked Texas motor vehicle record information from the first requestor under section 552.130.⁴

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 have marked in the remaining information. You represent that 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 that release of the information you have marked would subject the officers to a substantial threat of physical harm. Therefore, we conclude the department must withhold the information you have marked under section 552.151 of the Government Code.

In summary, the department may withhold the information you have marked under section 552.108 of the Government Code. The department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent each requestor does not have a right of access to the Texas motor vehicle information at issue, the department must withhold the marked information under section 552.130 of the Government Code. The department must withhold the information you have marked under section 552.151 of the Government Code. The remaining 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.

⁴We 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 a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/em

Ref: ID# 397090

Enc. Submitted documents

c: Requestor
(w/o enclosures)