



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 21, 2010

Ms. S. McClellan
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2010-16008

Dear Ms. McClellan:

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# 398161 (DPD Request No. 2010-7168).

The Dallas Police Department (the "department") received a request for information pertaining to a specified incident. You state you have released some of the requested information. You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), (e)(1)(D). 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. *See id.* § 552.147. Additionally, Open Records Decision No. 684 (2009) authorizes the withholding of 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. However, you do not assert, nor does our review indicate, that you have

been otherwise authorized to withhold the vehicle identification numbers and criminal history record information you have redacted without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the department should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption that the redacted information is public. *See* Gov't Code § 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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 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. In addition, this office has found that an individual's criminal history when compiled by a governmental body may be protected under common-law privacy. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Upon review, we agree that the information you have marked is highly intimate or embarrassing and of no legitimate public concern. The department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the information you have marked is related to a pending criminal case and that its release would interfere with the investigation and prosecution of the case. Based on your representations, we conclude that section 552.108(a)(1) is applicable in this instance. *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) (*per curiam*) (court delineates law enforcement interests that are present in active cases).

We note, and you acknowledge, 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*. *See* 531 S.W.2d at 186-88. The department must release basic information even

if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). With the exception of basic information, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

You have marked Texas driver's license numbers, license plate numbers, and vehicle identification numbers in the remaining information. Section 552.130 of the Government Code provides that 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. Gov't Code § 552.130(a)(1)-(3). Accordingly, the department must withhold the information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the information you have marked, in addition to the information we have marked, under section 552.130 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.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/tp

Ref: ID# 398161

Enc. Submitted documents

c: Requestor
(w/o enclosures)