



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2010

Mr. Jose Hernandez
Records Clerk
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2010-16495

Dear Mr. Hernandez:

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# 403022 (Reference No. 13946).

The Edinburg Police Department (the "department") received a request for a specified report. You claim the requested information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law

¹Although you do not specifically raise section 552.130 of the Government Code, you have marked information the department seeks to withhold under that exception. Accordingly, we will consider your claim under section 552.130, which is a mandatory exception that may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

²This office will raise section 552.101 on behalf of a governmental body, as this exception is mandatory and may not be waived. Gov't Code §§ 552.007, .352; ORD 674 at 3 n.4.

privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). The medical information we have marked is highly intimate or embarrassing and not a matter of legitimate public interest. The department must withhold the marked medical information under section 552.101 of the Government Code 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). 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 have marked the information the department seeks to withhold under section 552.108. You state that the marked information is related to a pending prosecution. Based on your representation, we conclude that the department may withhold the marked information under section 552.108(a)(1).³ *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 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.⁴ Gov’t Code § 552.147(a). The department may withhold the social security number you have marked under section 552.147.

In summary: (1) the marked medical information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information you have marked under section 552.108 of the Government Code may be withheld under section 552.108(a)(1); and (3) the social security number you have marked may be withheld

³As we are able to make this determination, we need not address section 552.130 of the Government Code.

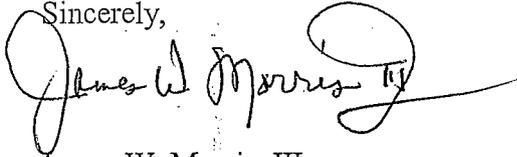
⁴We note that section 552.147(b) authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

under section 552.147 of the Government Code. The rest of the requested information must be released.⁵

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 403022

Enc: Submitted documents

c: Requestor
(w/o enclosures)

⁵We note that the department would ordinarily be required to withhold some of the remaining information on privacy grounds. In this instance, however, the information in question pertains to this requestor, who has a right to her own private information. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Should the department receive another request for these same records from a person who would not have a right of access to this requestor's private information, the department should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302.