



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2010

Ms. M. Ann Montgomery
District Attorney
Ellis County Courts Building
109 South Jackson
Waxahachie, Texas 75165

OR2010-17566

Dear Ms. Montgomery:

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# 400795.

The Ellis County Sheriff's Department (the "department") received a request for information involving specified dates and the requestor's address. You claim some of the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

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(a)(1). You state that the marked information is related to a pending criminal case. Based on your representations, we conclude that the department may withhold the marked information under section 552.108(a)(1) of the Government Code. *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 552.108(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[.]” Gov’t Code § 552.108(a)(2). You have marked the information the department seeks to withhold under section 552.108(a)(2). You state that the marked information is related to concluded investigations that did not result in a conviction or a deferred adjudication. Based on your representations, we conclude that the department may withhold the marked information under section 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state, a Texas motor vehicle title or registration issued by an agency of this state, or a personal identification document issued by an agency of this state or a local agency authorized to issue a personal identification document. *See* Gov’t Code § 552.130(a)(1)-(3). We agree that the department must withhold the Texas driver’s license numbers you have marked under section 552.130 of the Government Code.¹ This exception is not applicable, however, to the cellular telephone numbers you have marked to be withheld under section 552.130. Therefore, the marked cellular telephone numbers may not be withheld under section 552.130 of the Government Code and must be released.

We note that the submitted documents also contain information protected by common-law privacy under section 552.101 of the Government Code.² Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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 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). We have marked information that is highly intimate or embarrassing and not a matter of legitimate public interest. The department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

¹We note that Open Records Decision No. 684 (2009), which this office issued, is a previous determination authorizing all governmental bodies to withhold ten categories of information, including a Texas driver’s license number under section 552.130, without the necessity of requesting an attorney general decision.

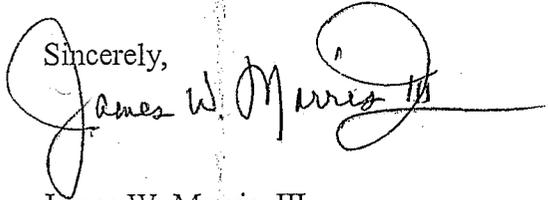
²Unlike other exceptions to disclosure under the Act, this office will raise section 552.101 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

In summary: (1) the department may withhold the information you have marked under section 552.108 of the Government Code; (2) the department must withhold the marked Texas driver's license numbers under section 552.130 of the Government Code; and (3) the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The rest of the submitted information must be released.³

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# 400795

Enc: Submitted documents

c: Requestor
(w/o enclosures)

³We note that the remaining information includes the requestor's Texas driver's license number, which the department would ordinarily be required to withhold under section 552.130. Because this section protects personal privacy, the requestor has a right to her own driver's license number under section 552.023 of the Government Code. 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). As previously noted, Open Records Decision No. 684 authorizes all governmental bodies to withhold a Texas driver's license number under section 552.130 without the necessity of requesting an attorney general decision. Thus, if the department receives another request for these same records from a person who would not have a right to this requestor's private information under section 552.023, the department is authorized to withhold this requestor's Texas driver's license number under section 552.130 without the necessity of requesting an attorney general decision.