



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2010

Mr. Steven R. Guy
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P.O. Box 1870
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OR2010-18405

Dear Mr. Guy:

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# 402225.

The Jacksonville Police Department (the "department"), which you represent, received a request for information related to incident report number 2006007716 or related investigations. You indicate the department need not comply with the request pursuant to section 552.028 of the Government Code. Alternatively, you claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.132 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹

Section 552.028 of the Government Code provides in relevant part:

(a) A governmental body is not required to accept or comply with a request for information from:

¹We assume that the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028(a)-(b). You argue that the requestor is an incarcerated individual or made the present request for information as a representative of an incarcerated individual. You contend that the department "is unable to rule out that the [requestor] is not one and the same [as the incarcerated individual]." To the extent the requestor is the incarcerated individual, we find the department need not comply with the request for information. You also state the requestor may be the father of the incarcerated individual and appears to be requesting information for the incarcerated individual. However, the fact that the requestor may be the incarcerated individual's father does not in itself establish that he submitted the request as an agent of the incarcerated individual. You have not provided any additional information establishing that the requestor is in fact acting as an agent of an inmate. Thus, to the extent the requestor is not the incarcerated individual, we cannot conclude that section 552.028 is applicable in this instance. Accordingly, we will address your arguments against disclosure under the Act.

Next, we address your assertion that the portion of category 13 which seeks all other reports, statements, and interviews pertaining to investigations regarding a named individual that were closed by the department is vague and ambiguous. You state "the [d]epartment would never know with certainty what is being requested and whether it had fully and completely complied." We note that administrative inconvenience in responding to a request for information is not grounds for refusing to comply with a request under the Act. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976). A governmental body is required to make a good-faith effort to relate a request to responsive information that it holds or to which it has access. *See Open Records Decision No. 561 at 8 (1990)* (construing statutory predecessor). Further, the department must make a good-faith effort to identify any information maintained by or on behalf of the department that is responsive to category thirteen of this request. We note you have not submitted information pertaining to any other investigations. Thus, to the extent any such information existed and was maintained by the

department on the date the department received this request, it must be released.² See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

Next, we note the submitted information is part of a completed investigation, which is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "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). Pursuant to section 552.022(a)(1), a completed investigation is expressly public unless it is either excepted under section 552.108 of the Government Code or is expressly confidential under other law. Although you raise section 552.103 of the Government Code, section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. See *id.* § 552.007; *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 No. 665 at 2 n.5 (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022. Therefore, the department may not withhold any of the submitted information under section 552.103 of the Government Code. However, you claim some of the information subject to section 552.022 is protected from disclosure under sections 552.101, 552.108, and 552.132, and under the common-law informer's privilege. Further, portions of the information at issue are subject to sections 552.1175 and 552.130 of the Government Code.³ The common-law informer's privilege is other law for the purpose of section 552.022. See *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *Tex. Comm'n on Env'tl. Quality v. Abbott*, No. GV-300417 (126th Dist. Ct., Travis County, Tex.). Sections 552.101, 552.1175, 552.130, and 552.132 are other laws for purposes of section 552.022(a)(1). Additionally, section 552.022(a)(1) specifically allows for the exception of information under section 552.108. Accordingly, we will address your arguments under these exceptions for the submitted information.

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 claiming section 552.108 must reasonably explain how and why the release of the

²As you have not submitted the requested information in category thirteen and have provided no explanation of how section 552.107 applies to the submitted information, we do not address your argument under section 552.107 of the Government Code for this information. See Gov't Code § 552.301(e)(1)(D) (governmental body must submit, in connection with request for attorney general decision, the requested information or representative samples thereof).

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the individual at issue in the submitted information remains an ongoing person of interest in certain investigations. However, you state the submitted information involves an aggravated assault with a deadly weapon for which the suspect was convicted. You do not explain how release of the information at issue relating to an offense for which the individual was convicted would interfere with the ongoing criminal investigations. Thus, we conclude the department has not established the applicability of section 552.108(a)(1) and the submitted information may not be withheld on this basis.

We understand you to assert the submitted information is excepted from disclosure under the common-law right to privacy. Section 552.101 of the Government Code 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.*, 540 S.W.2d at 685. 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. *Id.* at 683. Upon review, we find no portion of the submitted information is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, no portion of the submitted information may be withheld under section 552.101 on the basis of common-law privacy.

Section 552.101 of the Government Code also encompasses information protected by the informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978)*. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *Open Records Decision No. 279 at 2 (1981)* (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5*.

We understand you to assert the submitted information contains the identifying information of individuals whose identities are protected by the common-law informer's privilege. We note the submitted information involves a report of an alleged violation of the Penal Code

to the department. Accordingly, we find the department may withhold the complainant's identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with the informer's privilege. However, we note that a witness who provides information in the course of an investigation, but does not make the initial report of a violation, is not an informant for purposes of the common-law informer's privilege. We thus conclude that none of the remaining information at issue may be withheld under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

We understand you to assert the remaining information is excepted from disclosure under section 552.132 of the Government Code, which provides in relevant part:

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

(1) the name, social security number, address, or telephone number of a crime victim or claimant; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

...

(d) An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the victim, including a photograph or other visual representation of the victim. An election under this subsection must be made in writing on a form developed by the governmental body, be signed by the employee, and be filed with the governmental body before the third anniversary of the latest to occur of one of the following:

(1) the date the crime was committed;

(2) the date employment begins; or

(3) the date the governmental body develops the form and provides it to employees.

Gov't Code § 552.132(b), (d). The remaining information is not held by the crime victim's compensation division of this office; therefore, section 552.132(b) is not applicable to this information. Moreover, there is no indication the remaining information involves a crime

victim who is an employee of a governmental body, so as to be subject to section 552.132(d). We therefore conclude the department may not withhold any portion of the remaining information under section 552.132 of the Government Code.

We note section 552.1175 of the Government Code may apply to portions of the remaining information. Section 552.1175 provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Id. § 552.1175(b). If the individual whose personal information is at issue is currently a licensed peace officer under article 2.12 of the Code of Criminal Procedure who elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information we have marked under section 552.1175 of the Government Code. Furthermore, the department must withhold this type of information from the audio recording of the interview with the individual whose information is at issue. If the individual at issue is not currently a licensed peace officer or does not elect to restrict public access to the information in accordance with section 552.1175(b), the department may not withhold this information under section 552.1175.⁴

We note the remaining information contains information subject to section 552.130 of the Government Code, which excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *Id.* § 552.130(a)(1). Thus, the department must withhold the information we have marked under section 552.130 of the Government Code.⁵

⁴Regardless of the applicability of section 552.117 of the Government Code, 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).

⁵We note this office 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 driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, to the extent the requestor is the incarcerated individual, we find the department need not comply with the request for information. To the extent the requestor is not the incarcerated individual, the department must withhold: (1) the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege; (2) the information we have marked under section 552.1175 of the Government Code, as well as this type of information from the audio recording of the interview with the former officer, if the individual whose personal information is at issue is currently a licensed peace officer under article 2.12 of the Code of Criminal Procedure who elects to restrict access to his information in accordance with section 552.1175(b); and (3) 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 402225

Enc. Submitted documents

c: Requestor
(w/o enclosures)