



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2011

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2011-02891

Dear Mr. Mann:

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# 410338 (GCA 10-0993 and GCA 10-0997).

The Garland Police Department (the "department") received two requests for information related to a specified accident. You state you have released a portion of the requested information to each requestor with redactions pursuant to Open Records Decision No. 684 (2009).¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. Section 552.101 encompasses the common-law right of privacy, which protects information if it (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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows

¹We note Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

The second request for information reveals that this requestor knows the identity of the individual involved, as well as the nature of the incident to which the requested information pertains. Therefore, withholding only the individual's identity or certain details of the incident from this requestor would not preserve the individual's common-law right to privacy. Accordingly, the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy from the second requestor.² However, the first request does not reveal that this requestor knows the identity of the individual involved, nor that he knows the nature of the incident. Accordingly, the submitted information may not be withheld in its entirety under common-law privacy from the first requestor. Thus, we will address your remaining arguments against disclosure of the submitted information to the first requestor.

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(a)(1) must reasonably explain how and why the release of the 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 that the submitted information relates to a pending criminal case. Based on your representation and our review, we conclude that the release of the information you have marked in red 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the department may withhold the information you have marked in red from the first requestor under section 552.108(a)(1) of the Government Code.

You have marked information in blue in the remaining information that you seek to withhold under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we agree the information we have marked is highly intimate or embarrassing and not of legitimate public concern. This marked information must be withheld from the first requestor under section 552.101 in conjunction with common-law privacy. However, the remaining information is not highly intimate or embarrassing and of legitimate public concern. Therefore, the remaining information you have marked in blue may not be withheld from the first requestor on the basis of common-law privacy.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information to the second requestor.

You have marked information in green in the remaining information that you seek to withhold under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or Texas motor vehicle title or registration. Gov't Code § 552.130(a)(1), (2). However, as you acknowledge, section 552.130 also protects privacy interests. Thus, the first requestor has a right of access to his client's Texas motor vehicle record information under section 552.023 of the Government Code, and the department may not withhold it from him under section 552.130. *Id.* § 552.023(a). Accordingly, the department must release the information we have marked to the first requestor pursuant to section 552.023. The department must withhold the remaining Texas motor vehicle record information you have marked in green under section 552.130 of the Government Code.

In summary, the department must withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the information you have marked in red from the first requestor under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy from the first requestor. With the exception of the information that belongs to the first requestor's client, which we have marked for release, the department may withhold the information you have marked in green under section 552.130 of the Government Code from the first requestor. The remaining information must be released to the first requestor.

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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

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Enc. Submitted documents

c: Requestor
(w/o enclosures)