



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2011

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

OR2011-04724

Dear Mr. Hernández:

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# 413950 (ref. No. 17814).

The Edinburg Police Department (the "department") received a request for two specified arrest reports pertaining to a named individual. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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. 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. 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* 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. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information

indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Some of the submitted information is highly intimate or embarrassing and is not of legitimate concern to the public; therefore, the department must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy. Upon review, however, we find the remaining information is not highly intimate or embarrassing; therefore, the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if (1) 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 requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal prosecution. Based on this representation, we conclude section 552.108(a)(1) is generally applicable to the information you have marked under that section. *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).

However, 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). Basic information refers to the information held to be public in *Houston Chronicle*. We note some of the information you have marked under section 552.108(a)(1), including a detailed description of the offense in the narrative portion of the report, constitutes basic information for purposes of *Houston Chronicle*. Thus, with the exception of the basic front page offense and arrest information, the department may withhold the information you have marked under section 552.108(a)(1).

You assert some of the remaining information is excepted from disclosure under section 552.130 of the Government Code, which provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). We agree

the department must withhold the Texas motor vehicle record information you have marked under section 552.130.¹

You also assert the submitted social security numbers are excepted from disclosure under section 552.147 of the Government Code, which provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). The department may withhold the social security numbers in the submitted information under section 552.147.²

However, we note the requestor is a CPS Specialist II with the Child Protective Services Division of the Texas Department of Family and Protective Services (“DFPS”). Section 411.114 of the Government Code allows DFPS to obtain criminal history record information (“CHRI”) concerning an individual who is the subject of a report of abuse or neglect of a child. *See id.* § 411.114(a)(4), (a)(2)(I). CHRI consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2).

The requestor does not state whether the individual who is the subject of the submitted reports is a suspect in a report of abuse or neglect of a child. Therefore, we are unable to conclude section 411.114 of the Government Code gives the requestor a right of access to any of the submitted information and must rule conditionally. *See id.* § 411.114; *see also id.* § 411.082(2). Accordingly, if the individual to whom the submitted reports pertain is a suspect in a report of abuse or neglect of a child, then the department must release information from the submitted reports that shows the types of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, if the individual to whom the submitted reports pertain is not a suspect in a report of abuse or neglect of a child, then the department is not required to release these types of information from the submitted reports.

To conclude, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information you have marked under section 552.130 of the Government Code. With the

¹We 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 driver’s license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general opinion.

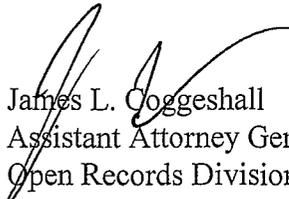
²We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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 may also withhold the marked social security numbers pursuant to section 552.147 of the Government Code. However, pursuant to section 411.114 of the Government Code, the department must release information from the submitted reports that shows the types of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions if the individual to whom the submitted reports pertain is a suspect in a report of abuse or neglect of a child. The department must release the remaining information to the 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tf

Ref: ID# 413950

Enc. Submitted documents

c: Requestor
(w/o enclosures)