



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2011

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

OR2011-08840

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# 422013 (Reference #20932).

The Edinburg Police Department (the "department") received a request for information pertaining to the requestor's client. The department states it has released portions of the requested information and claims the remaining portions are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions the department claims 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 section 261.201 of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Report number 10-25123 pertains to an investigation of injury to a child. Therefore, this information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). The department has not indicated it has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, report number 10-25123 is confidential, and the department must withhold it pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).*

Next, the department asserts section 552.108 of the Government Code excepts portions of report number 2010-60008 from public disclosure. 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). Generally, 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), 301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The department states report number 2010-60008 relates to a pending criminal investigation. Based upon this representation, we conclude release of the offense report 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).

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 Publishing Co.*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88; *see also Open Records Decision No. 127 (1976)*. Thus, with the exception of basic information, including a detailed description of the offense, the department may withhold report number 2010-60008 from disclosure based on section 552.108(a)(1).

The department seeks to withhold most of the remaining reports under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if 1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and 2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. 540 S.W.2d at 683. Although portions of the information in the remaining reports are private because the information is highly intimate or embarrassing and is not of legitimate public interest, the requestor is the personal representative of the person whose private information is at issue. Therefore, she has a special right of access to such information under section 552.023 of the Government Code. Section 552.023 provides a person's authorized representative a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person's privacy interests. Gov't Code § 552.023. Thus, the department may not withhold the remaining information from this requestor pursuant to common-law privacy.

The department asserts section 552.130 of the Government Code excepts from disclosure the Texas motor vehicle record information it marked. Section 552.130 excepts from public disclosure information relating to a Texas driver's license or Texas motor vehicle title or registration. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Thus, the department must withhold the Texas motor vehicle record information it and we have marked under section 552.130.¹

Lastly, the department asserts section 552.147 of the Government Code excepts the social security number it marked from public disclosure. Section 552.147 provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. Therefore, the department may withhold the social security number it marked under section 552.147.²

In summary, the department must withhold report number 10-25123 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and the marked Texas motor vehicle record information under section 552.130 of the Government Code. With the exception of basic information, including a detailed description of the offense, the department may withhold report number 2010-60008 under section 552.108(a)(1). Lastly, the department may withhold the social security number it marked under section 552.147 and must release the remainder to this requestor.³

¹We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold a Texas driver's license number and Texas license plate number under section 552.130 without the necessity of requesting an attorney general decision.

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.

³Because the requestor has a special right of access to this information under section 552.023 of the Government Code, if the department receives a future request for this information from an individual other than the requestor, the department should again seek our decision.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 422013

Enc. Marked documents

c: Requestor
(w/o enclosures)