



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2011

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

OR2011-08923

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# 421512 (GCA 11-0272).

The Garland Police Department (the "department") received a request for information pertaining to a specified incident and all arrest reports for two named individuals. You state the department has released some of the submitted information. You also indicate the department has redacted a Texas driver's license number pursuant to Open Records Decision No. 684 (2009) and a social security number under section 552.147 of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You state that some of the requested information is the subject of a previous ruling issued by this office, Open Records Letter No. 2011-05295 (2011). In that ruling, we determined that the department may withhold the information you marked in red and the audio

¹Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a Texas driver's license number under section 552.130 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).

recordings submitted for that ruling pursuant to section 552.108(a)(1) of the Government Code, but must release the remaining information. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, we agree the department may continue to rely on Open Records Letter No. 2011-05295 as a previous determination and withhold or release the information we previously ruled on in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we will address your arguments for the information not previously ruled upon. 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 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-682. Common-law privacy encompasses the specific types of information 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 found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). You claim the information you have marked in blue is protected by common-law privacy. We find the information in question is highly intimate or embarrassing and not a matter of legitimate public interest. We therefore agree the department must withhold the information you have marked in blue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108 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 claim section 552.108(a)(1) for the information you have marked in red. You state release of the marked information would interfere with pending criminal investigations. Based on your representation, we conclude the department may withhold the information you have marked in red under section 552.108(a)(1) of the Government Code. *See Houston Chronicle*

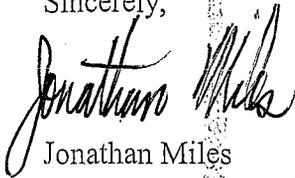
Publ'g Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

In summary, the department may continue to rely on Open Records Letter No. 2011-5295 as a previous determination and withhold or release the information we previously ruled on in accordance with that ruling. The department must withhold the information you have marked in blue under section 552.101 of the Government Code in conjunction with common-law privacy and may withhold the information you have marked in red under section 552.108(a)(1) 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 421512

Enc. Submitted documents

c: Requestor
(w/o enclosures)