



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2011

Ms. Tiffany Bull
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2011-11985

Dear Ms. Bull:

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# 427303 (APD Reference No. 4206).

The Arlington Police Department (the "department") received a request for specified offense reports involving a named individual. You claim the submitted information is 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.

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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. 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 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. In this instance, although you seek to withhold Exhibit C in its entirety, you have not demonstrated,

nor does it otherwise appear, this is a situation in which the entire report must be withheld on the basis of common-law privacy. Therefore, Exhibit C may not be withheld in its entirety under section 552.101 in conjunction with common-law privacy.

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: (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.* § 552.301(e)(1)(A). You state Exhibit B relates to an on-going criminal investigation. You also state, and provide documentation representing, that Exhibit C relates to a pending criminal prosecution. Based on your representations and our review, we conclude that the release of Exhibits B and C would interfere with the detection, investigation, or prosecution of crime, and we agree section 552.108 is applicable. *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.*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108, however, 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*. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may generally withhold Exhibits B and C under section 552.108(a)(1) of the Government Code.¹ We note, however, that a portion of the basic information in Exhibit C is protected by section 552.101 of the Government Code.

As noted above, section 552.101 encompasses common-law privacy. Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Therefore in releasing basic information under section 552.108(c), the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We note the requestor is an investigator with the Fort Worth Independent School District (the “district”) who is seeking disclosure of the reports at issue pursuant to an intergovernmental transfer. The interagency transfer doctrine provides that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinion No. GA-0055 (2003); Open Records Decision Nos. 680 at 7 (2003), 667 at 3-4 (2000). However, an interagency transfer of information is

¹Basic information includes the social security number of an arrested person. 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. *See* Gov’t Code § 552.147(b).

not permissible where the applicable statute enumerates the specific entities to which information encompassed by the statute may be disclosed, and the enumerated entities do not include the requesting governmental body. *See* Open Records Decision Nos. 655 at 8-9 (1997), 516 at 4-5 (1989), 490 at 2 (1988).

Common-law privacy and sections 552.108 and 552.147 are not confidentiality statutes that enumerate specific entities to which release of the confidential information is authorized. Thus, pursuant to the intergovernmental transfer doctrine, the department has the discretion to release the information subject to common-law privacy and sections 552.108 and 552.147 to the requestor. Furthermore, release pursuant to the interagency transfer doctrine does not constitute a release of information to the public for the purposes of section 552.007 of the Act. *See, e.g.*, Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); *see also* Gov't Code §§ 552.007, .352. Thus, the department does not waive its interests in withholding this information by exercising its discretion under the interagency transfer doctrine. We note, however, portions of Exhibits B and C are subject to sections 411.083 and 552.130 of the Government Code, which both have access provisions governing release of information.² Consequently, because information subject to these exceptions must be withheld if the department chooses to release the submitted information pursuant to the interagency transfer doctrine, we must consider the applicability of these sections to the submitted information.

Section 552.101 of the Government Code encompasses section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information in accordance with chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may only release CHRI to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked the information that is confidential pursuant to chapter 411. Accordingly, if the department chooses to release Exhibits B and C pursuant to the interagency transfer

²The 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).

doctrine, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *See* 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). Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code if the department chooses to release Exhibits B and C to the requestor pursuant to the interagency transfer doctrine.³

In summary, with the exception of the information we have marked that must be withheld under sections 411.083 and 552.130 of the Government Code, the department has the discretion to release Exhibits B and C to the requestor under the interagency transfer doctrine. Should the department choose not to exercise its discretion under the interagency transfer doctrine, then, with the exception of basic information, the department may withhold Exhibits B and C under section 552.108 of the Government Code. However, in releasing basic information, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

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,



Kirsten Brew
Assistant Attorney General
Open Records Division

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³We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number and Texas license plate number under section 552.130, without the necessity of requesting an attorney general decision.

Ref: ID# 427303

Enc. Submitted documents

c: Requestor
(w/o enclosures)