



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 14, 2011

Ms. Jennifer C. Cohen  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2011-13237

Dear Ms. Cohen:

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# 429893 (DPS PIR# 11-1564).

The Texas Department of Public Safety (the "department") received a request for the probable cause affidavit and any other paperwork related to the arrest of a named individual. You state the department has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 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 the submitted information relates to an ongoing criminal case and release of the information would interfere with the investigation and prosecution of that case. *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). Based on this representation and our review, we agree the department may withhold the information you have marked and the submitted audio and video recordings under section 552.108(a)(1) of the Government Code.

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 doctrine of common-law 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 type of information considered highly intimate or 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. Further, this office has concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision 393 at 2.; *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Upon review, we find the submitted information pertains to an attempted sexual assault. Accordingly, the department must withhold the identifying information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175(b) of the Government Code provides:

Information that relates to the home address, home telephone number, emergency contact information, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual’s choice on a form provided by the governmental body, accompanied by evidence of the individual’s status.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 3 (to be codified as an amendment to Gov’t Code § 552.1175(b)). We note the submitted information relates to an individual who was arrested in relation to an alleged offense of official oppression. Accordingly, we are unable to determine if the information you have marked under section 552.1175 relates to

an individual who is a currently licensed peace officer. Therefore, we must rule conditionally. If the individual to whom this information relates is a currently licensed peace officer, and he makes a proper election under section 552.1175, then the department must withhold the information we have marked under section 552.1175 of the Government Code. However, if the individual to whom the information relates is not a currently licensed peace officer, or if he does not make a proper election under section 552.1175, then the department may not withhold the information we have marked under section 552.1175 of the Government Code.<sup>1</sup> The remaining information you have marked consists of a driver's license number and class type, which are not subject to section 552.1175. Therefore, the department may not withhold this information under section 552.1175 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country and information related to a motor vehicle title or registration issued by an agency of this state or another state or country. 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). The department must withhold the motor vehicle record information you have marked, and the information we have marked, under section 552.130 of the Government Code.

In summary, the department may withhold the information you have marked and the submitted audio and video recordings under section 552.108(a)(1) of the Government Code. The department must withhold the identifying information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individual whose personal information is at issue is a currently licensed peace officer and he has made a proper election, the department must withhold the information we have marked under section 552.1175(b) of the Government Code. The department must withhold the motor vehicle record information you have marked, and the information we have marked, under section 552.130 of the Government Code. The department must release the remaining information.

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.

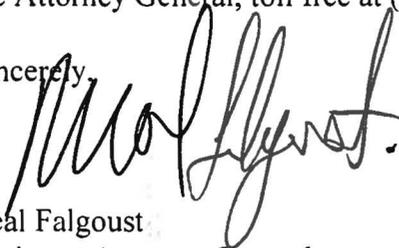
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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

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<sup>1</sup>Regardless of the applicability of section 552.1175, the department may withhold this individual's social security number under section 552.147 of the Government Code. *See* Gov't Code § 552.147(b).

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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is fluid and cursive, written over the word "Sincerely,".

Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/agn

Ref: ID# 429893

Enc. Submitted documents

c: Requestor  
(w/o enclosures)