



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2011

Mr. Rodolfo Ramirez
Assistant District Attorney
Fort Bend County
301 Jackson Street, Room 101
Richmond, Texas 77469

OR2011-14965

Dear Mr. Ramirez:

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# 433056.

The Fort Bend County District Attorney's Office (the "district attorney") received a request for information related to Cause No. 90-DCR-021279. You have redacted some social security numbers under section 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.1325, and 552.147 of the Government Code. We have also received and considered comments from the City of Houston (the "city"). *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the city seeks to withhold information that the district attorney has not submitted for our review. This ruling does not address information beyond what the district attorney has submitted in requesting this ruling. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

¹Section 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).

Next, we address the district attorney's arguments under section 552.108 of the Government Code for the information in Exhibit F. Section 552.108 provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Id. § 552.108(a)(4), (b)(3). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). The district attorney contends the information in Exhibit F reflects the mental impressions and legal reasoning of the district attorney related to its prosecution of the Cause No. 90-DCR-021279. Upon review, we agree the information in Exhibit F either was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflect the mental processes or legal reasoning of an attorney

representing the state. Consequently, the district attorney may withhold the information in Exhibit F under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.

Next, we address the city's arguments under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). The city raises section 552.108(a)(2) and states a portion of the submitted information consists of law enforcement records compiled by the city's police department (the "department"). *See Open Records Decision Nos. 372 (1983) (statutory predecessor to section 552.108 may be invoked by any proper custodian of law enforcement information).* The city further states the information at issue concerns a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) is applicable to the information at issue, which we have marked.

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. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information).* Basic information includes the identification and description of the complainant, as well as a detailed description of the offense. We note basic information does not include information subject to section 552.130. Thus, with the exception of basic information, the district attorney may withhold the information we have marked under section 552.108(a)(2).²

The city claims some of the basic information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. In addition to its remaining arguments against disclosure, the district attorney also claims section 552.101 in conjunction with common-law privacy. Accordingly, we will address both the city's and the district attorney's claims under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts from disclosure "information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

right of 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The types of information considered 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. The remaining information, including the basic information in the department's records, includes the identifying information of victims of alleged sexual assaults. 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. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). 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 from the department's records, the district attorney must withhold the victim's identifying information, which we have marked, under section 552.101 in conjunction with common-law privacy. However, the remaining basic information in the department's records must be released. Additionally, the district attorney must withhold the victims' identifying information in the remaining information, which we have marked, under section 552.101 in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Accordingly, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.³

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in 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 not release CHRI except to another criminal justice agency for a criminal justice purpose. *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.

³As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we agree that a portion of the remaining information consists of CHRI generated by the National Crime Information Center or by the Texas Crime Information Center. Accordingly, the district attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or an agency of another state or country is excepted from public release. 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). Upon review, we agree portions of the remaining information consist of motor vehicle record information. Accordingly, except where we have marked for release, the district attorney must withhold the motor vehicle record information you have marked in the remaining information, as well as the motor vehicle record information we have marked in the remaining information, under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). We agree the district attorney may withhold the social security numbers in the remaining information under section 552.147.

In summary, the district attorney may withhold the information in Exhibit F under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code. With the exception of basic information, the district attorney may withhold the information we have marked under section 552.108(a)(2) of the Government Code. However, in releasing the basic information, the district attorney must withhold the identifying information of the alleged sexual assault victim, which we have marked in the department's records, under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney must also withhold the identifying information of the alleged sexual assault victims in the remaining information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.089 of the Government Code and federal law. Except as we have marked for release, the district attorney must withhold the motor vehicle record information you have marked, in addition to the motor vehicle record information we have marked, in the remaining information under section 552.130 of the Government Code. The district attorney may withhold the social security numbers you have marked under section 552.147 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,

A handwritten signature in black ink, appearing to read 'VB', with a long horizontal flourish extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 433056

Enc. Submitted documents

c: Requestor
(w/o enclosures)