



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 17, 2011

Ms. Kristin Kidd  
Assistant District Attorney  
Denton County Criminal District Attorney's Office  
P.O. Box 2850  
Denton, Texas 76202

OR2011-15029

Dear Ms. Kidd:

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# 433140.

The Denton County Criminal District Attorney's Office (the "district attorney") received a request for specified audio and video recordings and specified photographs related to a specified case file. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the information on the submitted inmate intake form, aside from the photograph of the defendant, is not responsive to the request because it is not one of the categories of information requested. This decision does not address the public availability of the non-responsive information, and that information need not be released in response to the present request.<sup>1</sup>

Next, we note you have not submitted information responsive to all the requested categories of photographs. To the extent the district attorney maintains additional information responsive to this request that existed on the date this request was received, we assume you have released it. If you have not released any such information, you must do so at this time.

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<sup>1</sup>Accordingly, we do not address your arguments under 552.130 and 552.147 for this information.

Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.108 of the Government Code provides in relevant 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:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(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:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(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.

Gov't Code § 552.108(a)(1), (a)(4), (b). 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 that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You do not state the responsive information pertains to an ongoing criminal investigation or prosecution, nor do you explain how its release would interfere in some way with the detection, investigation, or prosecution of crime. In fact, you state the information at issue pertains to a case that “has been disposed of by a plea to probation . . . and is no longer pending.” Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(1) to the responsive information, and no portion of this information may be withheld on that basis.

Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) exempts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). In addition, generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under law enforcement exception), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See* Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor).

In this instance, you state that “[m]aking all in-car videos open to the public would interfere with the future detection, investigation or prosecution of a crime, in that witnesses would be less likely to report a crime if they could end up on a video that is open to the public.” Although you make this general assertion, we find you have failed to meet your burden to establish that public access to the information at issue would interfere with law enforcement. Accordingly, the district attorney may not withhold any of the responsive information under section 552.108(b)(1).

A governmental body claiming section 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation or prosecution that has concluded in a final

result other than a conviction or deferred adjudication. As noted above, you state the case at issue has been disposed of by a plea to probation. Thus, the investigation and prosecution of this matter resulted in a deferred adjudication. Therefore, we find you have failed to demonstrate the applicability of section 552.108(b)(2) to the responsive information. Accordingly, the district attorney may not withhold any of the responsive information under section 552.108(b)(2) of the Government Code.

You also claim the responsive information is excepted from disclosure by sections 552.108(a)(4) and 552.108(b)(3). Gov't Code § 552.108(a)(4), (b)(3). Although you state the information at issue is held by a prosecutor, you do not provide any arguments explaining how this information either was prepared by an attorney or reflects any attorney's mental processes or legal reasoning. Thus, we conclude you have failed to explain how this information is subject to section 552.108(a)(4) or section 552.108(b)(3), and it may not be withheld on that basis.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses the doctrine of common-law 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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. This office has also found 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).* Upon review, we find the information we have indicated in the submitted video recording is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the district attorney must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates 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(a)(2)). Upon review, we find the district attorney must withhold the information we have indicated in the submitted video recording under section 552.130 of the Government Code.

In summary, the district attorney must withhold the information we have indicated in the submitted video recording under section 552.101 of the Government Code in conjunction

with common-law privacy and section 552.130 of the Government Code. The remaining responsive 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](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 'Sarah Casterline', with a stylized flourish at the end.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/ag

Ref: ID# 433140

Enc. Submitted documents

c: Requestor  
(w/o enclosures)