



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2011

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2011-16812

Dear Mr. Alicie:

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# 436147.

The Baytown Police Department (the “department”) received a request for the police report pertaining to a specified incident. You state the department will redact social security numbers and partial social security numbers pursuant to section 552.147 of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.108, 552.130, and 552.152 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) 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 . . . 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

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).

²Although you raise section 552.151 of the Government Code for portions of the submitted information, we note the 82nd Texas Legislature renumbered section 552.151 to section 552.152 of the Government Code. Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20).

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 claiming an exception to disclosure under section 552.108 must reasonably explain how and why this exception applies to the information it seeks to withhold. *See id.* §§552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977). You state the submitted information pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on your representations and our review, we agree the department may withhold the information you have marked under section 552.108(a)(2).

You raise section 552.130(a)(3) of the Government Code for a portion of the remaining information. Section 552.130(a)(3) provides that information relating to a personal identification document issued by a Texas agency, or an agency of another state or country, is excepted from public release.³ 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)(3)). Upon review, we agree the department must withhold the personal identification number you have marked under section 552.130(a)(3).

You also raise section 552.152 of the Government Code for portions of the remaining information. Section 552.152 provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20) (to be codified as Gov’t Code § 552.152). You inform us the information you have marked under section 552.152 relates to undercover police officers. You state release of this information would subject these officers to a substantial threat of physical harm. Based on your representations and our review, we conclude you have demonstrated release of the information at issue would subject

³We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov’t Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov’t Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684.

the officers to a substantial threat of physical harm. Therefore, the department must withhold the information you marked under section 552.152.

In summary, the department may withhold the information you marked under section 552.108(a)(2) of the Government Code. The department must withhold the information you marked under sections 552.130 and 552.152 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 436147

Enc. Submitted documents

c: Requestor
(w/o enclosures)