



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2011

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

OR2011-19172

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# 440745 (APD #5559-101011).

The Arlington Police Department (the "department") received a request for information related to incident report number 10-72184. You claim that the submitted information, incident report numbers 10-722212 and 10-72184, is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

This office has ruled on the question of the required public release of both incident report numbers 10-722212 and 10-72184 in a prior ruling, Open Records Letter No. 2010-18927 (2010). In that ruling, we reached two conclusions. First, we determined that, with the exception of the basic information, the department may withhold incident report number 10-72212 based on section 552.108(a)(1) of the Government Code because the information at issue related to a pending criminal case. Second, because the department failed to submit incident report number 10-72184 to our office for review, we determined that, "[t]o the extent report number [10-72184] exists, we assume [the department] released it."

With regard to the first conclusion, and as you do not indicate there has been any change in the basis for the conclusion in the previous ruling that the department may withhold report

number 10-72212 based on section 552.108(a)(1), we conclude, with the exception of the submitted CR-2 accident report, which we address below, you may withhold or release report number 10-72212 on the basis of Open Records Letter No. 2010-18927 to the extent the submitted information is the same information as was ruled on in that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination). To the extent the submitted information was not at issue in the prior ruling, we will consider your section 552.108 claim.

With regard to the second conclusion, if a governmental body releases to a member of the public nonconfidential information, the governmental body must release the information to all members of the public who request it. Gov't Code § 552.007(b). Thus, as the department released report number 10-72184 to a member of the public pursuant to Open Records Letter No. 2010-18927, it must release the nonconfidential portions of this report to the requestor in this case. *Id.* As you have submitted this report for our review, we will consider whether portions of the report are confidential.

We next address your section 552.108 argument for the information that is not subject to Open Records Letter No. 2010-18927. Section 552.108(a) 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). Generally, 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 requested information relates to a pending criminal investigation. Based upon this representation, we conclude that the release of the information would interfere with the detection, investigation, or prosecution of crime. *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).

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*. Open Records Decision No. 127 (1973). Thus, with the exception of the basic front page offense and arrest information, you may withhold the information not subject to Open Records Letter No. 2010-18927, including the portions of report numbers 10-72184 and 10-72212 that did not exist at the time of the prior ruling, based on section 552.108(a)(1).

The submitted information includes a completed CR-2 accident report form. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses information made confidential by statute. Gov't Code § 552.101. Section 550.065(b) of the

Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). The requestor has not provided the department with two of the three requisite pieces of information specified by the statute. Accordingly, the department must withhold the submitted CR-2 accident report form under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code.

We next consider the confidentiality of information in report number 10-72184 that existed at the time of the prior request.¹ Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that an individual's personal financial information not relating to a financial transaction between the individual and a governmental body is excepted from required public disclosure under common-law privacy as encompassed by section 552.101 of the Government Code. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, information relating to an employee's choice of insurance carrier and his election of optional coverages is confidential under the right of privacy. Open Records Decision No. 600 at 10-11 (1992). We have marked private financial information. The department must withhold this marked information based on section 552.101 in conjunction with the common-law right to privacy.

Section 552.130 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, another state, or country is excepted from public release. Gov't Code § 552.130. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009); *see* Gov't Code § 552.136(a) (defining "access device"). Accordingly, the department must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

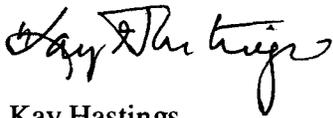
¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the department may continue to rely on Open Records Letter No. 2010-18927 as a previous determination and withhold or release information in accordance with that ruling. The department must release the nonconfidential portions of report number 10-72184 to the extent the information existed at the time of the prior request. The department must withhold the information we marked based on sections 552.101, 552.130 and 552.136. The department may withhold the remaining information based on section 552.108(a)(1), except the department must release the basic information in accordance with section 552.108(c).

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/sdk

Ref: ID# 440745

Enc. Submitted documents

c: Requestor
(w/o enclosures)