



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2012

Ms. Neera Chatterjee
Office of General Counsel
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2012-02951

Dear Ms. Chatterjee:

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# 447699 (ORR# 141389).

The University of Texas Medical Branch ("UTMB") received a request for information concerning an investigation of a stolen gun. You state UTMB has released some of the requested information, with a Texas license plate number redacted under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009) and other information redacted pursuant to section 552.1175 of the Government Code.¹ You claim some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have also received correspondence from the Houston Police Department (the "department") objecting to the release of some of the information at issue under section 552.108 of the Government Code. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure who properly elects to keep this information confidential. *See* Gov't Code § 552.1175(b), (f).

not be released). We have considered the submitted arguments and reviewed the submitted information.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” 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), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See Open Records Decision Nos. 474 at 4-5 (1987)*. Where a non-law-enforcement agency possesses information relating to a pending case of a law enforcement agency, the non-law-enforcement agency may withhold the information under section 552.108 if (1) it demonstrates that the information relates to the pending case and (2) this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. The department states some of the requested information, which we have marked, relates to a pending criminal investigation. Based on this representation, we conclude the release of the information at issue 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). Accordingly, UTMB may withhold the information we have marked 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.” 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. You assert a UTMB employee’s date of birth located in the remaining information, which you acknowledge is not held by UTMB in an employment context, is confidential under common-law privacy. However, upon review, we find this information is not highly intimate or embarrassing. Therefore, none of the remaining information is confidential under common-law privacy, and UTMB may not withhold it under section 552.101 on that ground.

Section 552.101 also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal

matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy. The information must concern the "most intimate aspects of human affairs." *Id.* at 5; *see Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985). After review of the remaining document, we find it does not contain information that is confidential under constitutional privacy. Therefore, UTMB may not withhold it under section 552.101 on that ground.

We note some of the remaining information may be excepted under section 552.1175 of the Government Code.² Section 552.1175(b) provides in part the following:

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.

Id. § 552.1175(b). UTMB must withhold the information we have marked under section 552.1175 if it concerns an individual who is currently a licensed peace officer and who elects to restrict access to this information in accordance with section 552.1175(b). However, UTMB may not withhold this information under section 552.1175 if the individual concerned either is not a currently licensed peace officer or he does not elect to restrict access to this information in accordance with section 552.1175(b).

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.,* Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

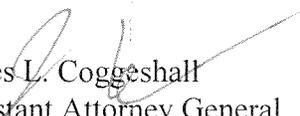
Gov't Code § 552.130. UTMB must withhold the motor vehicle record information we have marked under section 552.130.

We conclude the following: UTMB (1) may withhold the information we have marked under section 552.108(a)(1) of the Government Code; (2) must withhold the information we have marked under section 552.1175 of the Government Code if it concerns an individual who is currently a licensed peace officer and who elects to restrict access to this information in accordance with section 552.1175(b); (3) must withhold the information we have marked under section 552.130 of the Government Code; and (4) 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, 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 447699

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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