



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 11, 2012

Mr. Nathan Brown  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2012-08906

Dear Mr. Brown:

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# 456014.

The El Paso City Attorney's Office (the "city attorney's office") received a request for all reports and statements made to the El Paso Police Department (the "department") regarding case number 11-249100. You state you have released basic information regarding the offense and the protective order to the requestor. *See* Gov't Code § 552.108(c) (basic information about an arrest, arrested person, or crime cannot be withheld under section 552.108). You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the remaining requested information is subject to section 552.022 of the Government Code, which provides in part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

*Id.* § 552.022(a)(17). The remaining information contains a court-filed document, which we have marked, that is subject to section 552.022(a)(17). Documents subject to section 552.022(a)(17) are excepted from disclosure only if they are confidential under the Act or other law. You raise section 552.108 as an exception to disclosure of the court-filed document. Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the city attorney's office may not withhold the court-filed document on the basis of section 552.108 of the Government Code. However, you also raise section 552.101 as an exception to disclosure of this information, which protects information made confidential under other law. Accordingly, we will consider the applicability of section 552.101 to the court-filed document. We will also address your arguments under sections 552.101 and 552.108 for the remaining information not subject to section 552.022.

Next, we address your argument under section 552.108 for the information not subject to section 552.022 of the Government Code. Section 552.108(a)(1) of the Government Code exempts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to an ongoing investigation. Based on this representation and our review, we conclude release of the remaining information not subject to section 552.022 would interfere with the detection, investigation, or prosecution of a 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 per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the city attorney's office may withhold the remaining information not subject to section 552.022 under section 552.108(a)(1) of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. You generally assert the court-filed document is protected by statutory and judicial grants of confidentiality. However, you have failed to direct our attention to any statute or judicial decision, nor are we aware of any, that would make the court-filed document confidential under section 552.101 of the Government Code. Therefore, the city attorney's office may not withhold the court-filed document under section 552.101 of the Government Code on the basis of any statutory or judicial grant of confidentiality.

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<sup>1</sup>As our ruling is dispositive, we do not address your remaining argument against disclosure of this information under section 552.101 of the Government Code.

You also seek to withhold the court-filed document under section 552.101 of the Government Code on the basis of common-law and constitutional privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate and 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. *See id.* at 683. We note common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, the city attorney's office may not withhold the court-filed document on the basis of section 552.101 of the Government Code in conjunction with common-law 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. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (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. ORD 455 at 4. 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.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)). We find no portion of the court-filed document falls within the zones of privacy or otherwise implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the court-filed document may not be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy. As no further exceptions to disclosure have been raised, the court-filed document must be released pursuant to section 552.022(a)(17) of the Government Code.

In summary, the city attorney's office must release the court-filed document we have marked pursuant to section 552.022(a)(17) of the Government Code. The city attorney's office may withhold the remaining requested information under section 552.108(a)(1) of the Government Code.

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 cursive script that reads "Jessica Marsh".

Jessica Marsh  
Assistant Attorney General  
Open Records Division

JM/bs

Ref: ID# 456014

Enc. Submitted documents

c: Requestor  
(w/o enclosures)