



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 13, 2012

Ms. Michelle L. Villarreal  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2012-12720

Dear Ms. Villarreal:

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# 461909 (City of Waco Reference # LGL- 12-804).

The City of Waco (the "city") received a request for all police reports pertaining to a specified address and a named individual. You state you are providing some information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) excepts 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 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 police report numbers 08-13012, 09-35, 12-8732, and 12-10520 pertain to open and active criminal investigations. Based upon your representation, we conclude release of report numbers 09-35, 12-8732, and 12-10520 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).

Thus, the city may generally withhold the information it has marked in these reports under section 552.108(a)(1).

We note, however, report number 08-13012 involves a misdemeanor assault and terroristic threat that occurred in 2008. The statute of limitations for the types of offenses described in the report is two years from the date of the offense. *See* Crim. Proc. Code art. 12.02 (indictment for Class A or Class B misdemeanor may be presented within two years from date of offense); Penal Code § 22.01 (assault offense under section 22.01(a) is a Class A misdemeanor), .07( terroristic threat a Class B misdemeanor). More than two years have elapsed since the events giving rise to the investigation in report number 08-13012, and you have not informed this office of any criminal charges filed in the limitations period. Thus, we find you have failed to demonstrate the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the city may not withhold the information you have marked in report number 08-13012 under section 552.108(a)(1) of the Government Code.

Additionally, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The city must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. We note the information being released in report number 12-10520 does not contain the details of the arrest, or a sufficient portion of the narrative to satisfy the requirement that basic information be released. *See* ORD 127. Accordingly, we determine the city must release the details of the arrest and a sufficient portion of the narrative to encompass a detailed description of the offense from report number 12-10520 to satisfy the required release of basic information pursuant to *Houston Chronicle*.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state the information contained in report number 08-12992 pertains to an investigation that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to the information you have marked in report number 08-12992, and it may be withheld on that basis.

Section 552.130 of the Government Code provides in relevant part:

- (a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (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(a)(1)-(3). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Thus, section 552.130 is not applicable to the deceased individual's driver's license information you have marked in report number 12-10520, and the city may not withhold it on that basis. However, the city must withhold the remaining motor vehicle record information it has marked, as well as the additional information we have marked, under section 552.130 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."<sup>1</sup> Section 552.101 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 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 found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147(a). Therefore, the city may not withhold the deceased individuals’ social security numbers, which you have marked in report numbers 08-12992 and 12-10520, under section 552.147. However, the city may withhold the remaining social security numbers you have marked under section 552.147.<sup>2</sup>

In summary, except for the details of the arrest and a detailed description of the offense in report number 12-10520, the city may withhold the information it has marked in report numbers 09-35, 12-8732, and 12-10520 under section 552.108(a)(1) and the information it has marked in report number 08-12992 under section 552.108(a)(2) of the Government Code. Except for the deceased individual’s driver’s license information, the city must withhold the motor vehicle record information marked under section 552.130 of the Government Code. The city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. With the exception of the information we have marked for release, the city may withhold the social security numbers you have marked under section 552.147 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](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,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/eb

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<sup>2</sup>We note section 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 an attorney general decision under the Act. See Gov’t Code § 552.147(b).

Ref: ID# 461909

Enc. Submitted documents

c: Requestor  
(w/o enclosures)