



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2012

Mr. Jose Hernandez
Records Supervisor
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2012-19174

Dear Mr. Hernandez:

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# 476650 (Reference No. 43893).

The Edinburg Police Department (the "department") received a request for a specified report. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You claim section 552.101 in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82.

Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101. *See generally*

Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

You have marked the information the department seeks to withhold on privacy grounds. We agree some of the information you have marked is highly intimate or embarrassing and not a matter of legitimate public interest. We have marked some additional information that is private. However, the remaining information at issue is not highly intimate or embarrassing and a matter of no legitimate public interest. Therefore, with the exception of the information we have marked for release, the department must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(1) 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 . . . 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 have marked the information the department seeks to withhold under section 552.108(a)(1). You state the marked information is related to a pending criminal prosecution. Based on your representation, we find 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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the department may withhold the marked information under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130(a)(1), (2). We agree the department must withhold the information you have marked under section 552.130. We have marked some additional information that must be withheld under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act.¹ *Id.* § 552.147(a). We agree the department may withhold the social security number you have marked under section 552.147 of the Government Code.

¹We note section 552.147(b) 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.

In summary, with the exception of the information we have marked for release, the department must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The department also (1) may withhold the information you have marked under section 552.108(a)(1) of the Government Code; (2) must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code; and (3) may withhold the social security number you have marked under section 552.147 of the Government Code. The department must release the rest of the submitted 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 476650

Enc. Submitted documents

c: Requestor
(w/o enclosures)