



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2013

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2013-02287

Dear Ms. Middlebrooks:

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# 482236 (PIR No. 2013-00157).

The Dallas Police Department (the "department") received a request for information related to a specified citation and all citations issued on a specified date. You indicate the department does not maintain some of the requested information.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.²

¹We note the Act does not require the department to release information that did not exist when it received the request, create responsive information, or obtain information that is not held by or on behalf of the department. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

²This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and not of legitimate concern to the public. *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. *See id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. We note the dates of birth of members of the public are generally not highly intimate or embarrassing. *See Open Records Decision No. 455 at 7 (1987)* (home addresses, telephone numbers, dates of birth not protected under privacy). Thus, we find you have failed to demonstrate how any of the information at issue is highly intimate or embarrassing and not of legitimate public interest. We therefore conclude the department may not withhold any of the information at issue 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 state the release of the information you have marked would interfere with a pending prosecution. Based on your representations, we conclude the department may withhold the marked information under section 552.108(a)(1) of the Government Code. *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).

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *See Gov’t Code § 552.130(a)(1)-(2)*. We conclude the department must withhold the driver’s license and motor vehicle information you have marked and the additional driver’s license and motor vehicle information we have marked under section 552.130.

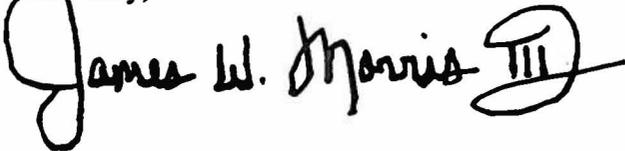
In summary, the department (1) may withhold the information related to the pending prosecution you have marked under section 552.108(a)(1) of the Government and (2) must withhold the driver’s license and motor vehicle information you have marked and the additional driver’s license and motor vehicle information we have marked under

section 552.130 of the Government Code. The rest of the submitted 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, 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 black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, stylized "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/eb

Ref: ID# 482236

Enc: Submitted documents

c: Requestor
(w/o enclosures)