



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2013

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79408-2000

OR2013-04467

Dear Ms. Sims:

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# 481536.

The Lubbock Police Department (the "department") received a request for the entire investigation file pertaining to a specified accident involving two named persons. You claim the submitted 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, you note a portion of the requested information is subject to a previous ruling from this office. In Open Records Letter No. 2013-00064 (2013), this office reviewed a request for the dash cam video regarding the above-mentioned accident. This office ruled that the department may withhold the dash cam video under section 552.108(a)(1) of the Government Code. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the department may continue to rely on the prior ruling as a previous determination and withhold the dash cam video we have previously ruled on in accordance with Open Records Letter No. 2013-00064. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from

disclosure). However, because the remaining responsive information is not encompassed by the previous determination, we will address your arguments.

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code 552.108(a)(1). 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal investigation. Based upon this representation, we conclude section 552.108(a)(1) is generally applicable in this instance. *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). We note, however, the information at issue includes a DIC-24 statutory warning form. The department provided a copy of this form to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Accordingly, the DIC-24 form may not be withheld under section 552.108.

Additionally, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* 531 S.W.2d at 186-188; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note that the submitted photographs and audio recordings are not considered basic information. Therefore, with the exception of the DIC-24 form and basic information, the department may withhold the remaining requested information under section 552.108(a)(1) of the Government Code.

We will now address your remaining arguments against release of the DIC-24 form and basic 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. Section 552.101 encompasses information protected by other statutes. You claim the remaining information is protected under the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 42 U.S.C. §§ 1320d-1320d-8. At the direction of Congress, the Secretary of Health and Human Services (“HHS”) promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of

Individually Identifiable Health Information, 45 C.F.R. pts. 160, 164 (“Privacy Rule”); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. *Id.* § 164.502(a).

This office addressed the interplay of the Privacy Rule and the Act in Open Records Decision No. 681 (2004). In that decision, we noted section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law and the use or disclosure complies with, and is limited to, the relevant requirements of such law. *See id.* § 164.512(a)(1). We further noted the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” *See* ORD 681 at 8; *see also* Gov’t Code §§ 552.002, .003, .021. We, therefore, held that the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v. Tex. Dep’t of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9; *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make information that is subject to disclosure under the Act confidential, the department may not withhold any of the information on this basis.

You also argue the DIC-24 form and basic information are excepted from public disclosure under section 552.101 of the Government Code in conjunction with former section 181.101 of the Health and Safety Code. Former section 181.101 provided, in relevant part, “[a] covered entity shall comply with the [HIPAA] and Privacy Standards relating to . . . uses and disclosures of protected health information, including requirements relating to consent[.]” Health & Safety Code § 181.101(a)(3) (repealed 2003). However, former section 181.101 was repealed effective September 1, 2003. *See* Act of June 17, 2001, 77th Leg., R.S., ch. 1511, § 1, 2001 Tex. Gen. Laws 5384, 5386, repealed by Act of April 10, 2003, 78th Leg., R.S., ch. 3, § 1, 2003 Tex. Gen. Laws 5. Thus, we conclude the department may not withhold any of the information under section 552.101 of the Government Code in conjunction with former section 181.101 of the Health and Safety Code.

We note that the DIC-24 form contains driver’s license information. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s or driver’s license or permit issued by any agency of this state or another state or country is excepted from public release.¹ Gov’t Code § 552.130(a)(1). Upon review, we find the department

¹The 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).

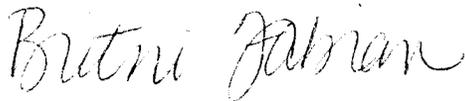
must withhold the driver's license number we have marked under section 552.130 of the Government Code.

In summary, the department may continue to rely on Open Records Letter No. 2013-00064 as a previous determination. Except for the DIC-24 form and basic information, which must be released, the department may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code. In releasing the DIC-24 form, the department must withhold the information we have marked under section 552.130 of the Government Code.²

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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 481536

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining argument against disclosure.