



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 18, 2013

Ms. Michele Tapia  
Assistant City Attorney  
City of Carrollton  
1945 East Jackson Road  
Carrollton, Texas 75006

OR2013-06315

Dear Ms. Tapia:

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# 484508 (City ID# 368).

The City of Carrollton (the "city") received a request for the records regarding the requestor during a specified time period. You claim portions of the submitted information are 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 submitted information.

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 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 the information you marked relates to two active criminal matters. Based on your representation and our review, we conclude the release of the information you have marked 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). Thus, section 552.108(a)(1) is applicable to the information you have marked.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Section 552.108(c) refers

to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. The city must release basic information, including a detailed description of the offense and the identity of investigating officers, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note you have marked the majority of the narrative portions of the reports you seek to withhold and the identity of investigating officers. The remaining information in the reports does not contain information sufficient to satisfy the requirement that a detailed description of the offense be released. Accordingly, the city must release sufficient portions of the reports to encompass basic information as described by *Houston Chronicle*. See 531 S.W.2d at 186-88; see also ORD 127. Thus, with the exception of basic information, the city may withhold the information you have marked under section 552.108(a)(1) 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." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information (1) containing 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. 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 also has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked in Exhibit D is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the information we have marked in Exhibit D must be withheld under section 552.101 in conjunction with common-law privacy. However, you have failed to demonstrate the remaining information you have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining information you have marked may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). We note some of the marked information may include the requestor's driver's license information. Section 552.130 protects privacy interests. As such, the requestor has a right of access to her own information. *Id.* § 552.023; see Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

Therefore, to the extent the requestor has a right of access to any of the marked driver's license information, the city must release such information to the requestor. To the extent the requestor does not have a right of access to any of the marked information, the city must withhold the driver's license information we have marked in Exhibit D under section 552.130. In either case, the city must withhold the driver's license information we have marked in Exhibit D to which the requestor does not have a right of access under section 552.130 of the Government Code. However, you have failed to demonstrate the remaining information you have marked in Exhibit D is subject to section 552.130. Thus, the remaining information you have marked in Exhibit D may not be withheld under section 552.130 of the Government Code.

Some of the remaining information may be subject to section 552.1175 of the Government Code.<sup>1</sup> Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). The remaining information indicates the telephone number we have marked relates to a peace officer who is employed by another police department. Section 552.1175(b) also applies to the personal cellular telephone number of an individual who falls within the scope of section 552.1175(a), provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, to the extent the marked information pertains to a peace officer who elects to restrict access to his marked information in accordance with section 552.1175(b), the city must withhold the marked telephone

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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. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

number under section 552.1175 of the Government Code. However, if the marked telephone number is a cellular telephone number, the city must withhold it under section 552.1175 only if a governmental body does not pay for the cellular telephone service. Conversely, if the officer at issue does not elect to restrict access to his information in accordance with section 552.1175(b) or the telephone number is a cellular telephone number and the telephone service is paid for by a governmental body, the marked telephone number may not be withheld under section 552.1175.

In summary, with the exception of basic information, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The city must withhold the information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of any driver's license information pertaining to the requestor, the city must withhold the driver's license information we have marked in Exhibit D under section 552.130 of the Government Code. To the extent the marked information pertains to a peace officer who elects to restrict access to his marked information in accordance with section 552.1175(b), the city must withhold the marked telephone number under section 552.1175 of the Government Code. However, if the marked telephone number is a cellular telephone number, the city must withhold it under section 552.1175 only if a governmental body does not pay for the cellular telephone service. As you raise no other exceptions to disclosure, 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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/dls

Ref: ID# 484508

Enc. Submitted documents

c: Requestor  
(w/o enclosures)