



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2013

Mr. Christopher Gregg
Gregg & Gregg, P.C.
16055 Space Center Boulevard., Suite 150
Houston, Texas 77062

OR2013-07011

Dear Mr. Gregg:

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# 485688.

The City of Nassau Bay (the "city"), which you represent, received a request for information related to a specified incident and city police department dispatch recordings during a specified time period. You claim some of 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, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). We have marked the documents subject to section 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 does not make information confidential for purposes of section 552.022(a)(17). Therefore, the marked court-filed documents may not be withheld under section 552.108 and must be released to the requestor.

You claim the remaining submitted documents are excepted from public disclosure under section 552.108(a)(1) of the Government Code, which protects “[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).

We note the submitted information includes a citation. Because a copy of the citation is provided to the person who is the subject of the citation, we find release of the citation will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the city may not withhold the citation, which we have marked, under section 552.108.

You inform us the remaining documents relate to “an open criminal prosecution” in municipal court. You assert release of the documents at issue would interfere with the detection, investigation, or prosecution of crime. Based on your representations and our review, we find the city has demonstrated release of the documents at issue 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 per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, with the exception of the marked citation, the city may withhold the remaining documents under section 552.108(a)(1) of the Government Code.

We note the citation contains information subject to section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle 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)(2). The city must withhold the information we have marked in the citation under section 552.130 of the Government Code.

You claim portions of the submitted audio recordings are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. 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 the common-law right to privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both elements of this test must be met. *Id.* at 681-82. Common-law privacy protects the type of information held to be intimate or embarrassing in *Industrial Foundation*. *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).

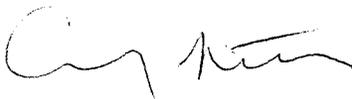
Upon review, we determine the city has failed to demonstrate how any portion of the audio recordings is information that is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any portion of the audio recordings under section 552.101 of the Government Code in conjunction with common-law privacy.

To summarize: the city must release (1) the marked court-filed documents in accordance with section 552.022(a)(17) of the Government Code, (2) the marked citation, except for the information we have marked under section 552.130 of the Government Code, and (3) the submitted audio recordings. The city may withhold the remaining documents under section 552.108(a)(1) of the Government Code.

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# 485688

Enc. Submitted documents

c: Requestor
(w/o enclosures)