



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2013

Ms. Jordan Hale
Assistant Attorney General
Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2013-08428

Dear Ms. Hale:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 487848 (PIR No. 13-35586).

The Office of the Attorney General (the "OAG") received a request for information pertaining to a named assistant attorney general. The OAG released most of the information and asserts the remainder is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the OAG's claimed exceptions and have reviewed the submitted sample of information.¹

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrines of common law and constitutional privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office 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). After review of the OAG's marked information, we agree the information is highly intimate or embarrassing and of no legitimate public interest. Thus, the OAG must withhold the information it marked under section 552.101 in conjunction with common-law privacy.

Section 552.108(a)(1) excepts from disclosure information 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). 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* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The OAG asserts the information it marked relates to pending criminal investigations conducted by its Criminal Prosecutions Division. Based upon this representation, we conclude release of the information relating to the two cases the OAG marked solely under section 552.108(a)(1) 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 n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the OAG may withhold information relating to the two cases pursuant to section 552.108(a)(1).

Section 552.108(a)(2) excepts from disclosure information held by a law enforcement agency or prosecutor concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. The OAG asserts the information it marked relates to a concluded criminal investigation or prosecution conducted by its Criminal Prosecutions Division that did not result in conviction or deferred adjudication. However, the OAG marked the information relating to the third case as excepted from disclosure under both subsection 552.108(a)(1) and subsection 552.108(a)(2). Because the OAG has made contradictory markings for the information relating to the same case and did not specify in its arguments which case is pending or has concluded, we find the OAG failed to demonstrate the applicability of either subsection to this information. Thus, we have marked the information the OAG must release.

In summary, the OAG must withhold the private information it marked under section 552.101 and may withhold the information relating to cases that it marked solely as excepted

from disclosure under section 552.108(a)(1). The OAG must release the information we marked.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 487848

Enc: Marked documents

c: Requestor
(w/o enclosures)