



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2013

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2013-11743

Dear Ms. Winn:

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# 492710.

The Travis County Sheriff's Office (the "sheriff's office") received a request for a specified incident report. 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.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)–(2). Section 552.108(a)(1) is mutually exclusive of section 552.108(a)(2). Section 552.108(a)(1) is applicable to information pertaining to a

pending criminal investigation or prosecution, while section 552.108(a)(2) protects law enforcement records pertaining to a criminal investigation or prosecution that concluded in a final result other than a conviction or a deferred adjudication. 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.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You claim section 552.108(a)(1) and state the report at issue pertains to a pending investigation. However, you also claim section 552.108(a)(2) and state the report at issue concerns a case that did not result in a conviction or deferred adjudication. Upon review, we find you provided this office with contradictory information and have failed to demonstrate the applicability of either section 552.108(a)(1) or section 552.108(a)(2). Accordingly, the sheriff's office may not withhold the specified incident report under either section 552.108(a)(1) or section 552.108(a)(2) 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 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 prongs of this test must be established. *Id.* at 681-82. The type of information considered highly 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 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. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. Although you seek to withhold the remaining information in its entirety, you have not demonstrated, nor does the information reflect, a situation in which the remaining information must be withheld in its entirety on the basis of common-law privacy. However, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Thus, the sheriff's office must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130(a)(1) 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

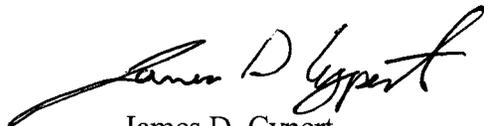
state or country is excepted from public release.¹ See Gov't Code § 552.130(a)(1). Therefore, the sheriff's office must withhold the driver's license information we have marked under section 552.130(a)(1) of the Government Code.

In summary, the sheriff's office (1) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) must withhold the driver's license information we have marked under section 552.130 of the Government Code. The sheriff's office must release the remaining information.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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James D. Cypert
Assistant Attorney General
Open Records Division

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¹The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note the information being released includes the requestor's motor vehicle record information, to which the requestor has a right of access. See generally Gov't Code § 552.023(a). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. See Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See Gov't Code § 552.130(d), (e). Thus, if the sheriff's office receives another request for this same information from a person who does not have such a right of access, section 552.130(c) authorizes the sheriff's office to redact the requestor's motor vehicle record information. Additionally, we note the information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

Ref: ID# 492710

Enc. Submitted documents

c: Requestor
(w/o enclosures)