



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2013

Ms. Delietrice Henry
Open Records Assistant
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2013-19390

Dear Ms. Henry:

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# 509422 (ORR# MILG100113A and ORR#MILG100113B).

The Plano Police Department (the "department") received two requests for information pertaining to specified incidents. You claim some of the requested 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.¹

Section 552.108 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

number 2012-00033735 relates to a pending criminal prosecution. Based on this representation and our review, we conclude the department generally may withhold report number 2012-00033735 under section 552.108(a)(1) of the Government Code. See *Houston Chronicle Publ'g Co. v. Department 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).

However, 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). 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; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). With the exception of basic information, the department may withhold report number 2012-00033735 under section 552.108(a)(1) of the Government Code.

You claim portions of report numbers 2013-00080382, 2013-00082917, and 2013-00175242 are subject to section 552.101 of the Government Code, which 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 doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Upon review, we find the information you have marked in report numbers 2013-00080382, 2013-00082917, and 2013-00175242 satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information you have marked in report numbers 2013-00080382, 2013-00082917, and 2013-00175242 under section 552.101 of the Government Code in conjunction with common-law privacy.²

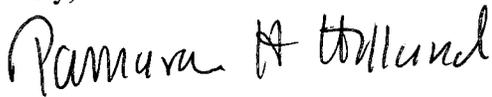
In summary, with the exception of basic information, the department may withhold report number 2012-00033735 under section 552.108(a)(1) of the Government Code. The department must withhold the information you have marked in report numbers 2013-00080382, 2013-00082917, and 2013-00175242 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information in report numbers 2013-00080382, 2013-00082917, and 2013-00175242.

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

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,

A handwritten signature in cursive script that reads "Tamara H. Holland".

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bhf

Ref: ID# 509422

Enc. Submitted documents

c: Requestor
(w/o enclosures)