



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 10, 2014

Ms. Linda M. Champion  
Assistant City Attorney  
City of Victoria  
P.O. Box 1758  
Victoria, Texas 77902-1758

OR2014-00696

Dear Ms. Champion:

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# 510718.

The City of Victoria (the "city") received a request for a specified fire investigation report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1085, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted information contains a media release. We note section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the city may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.108 of the Government Code for this information, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision No. 586 (1991) (governmental body may waive statutory predecessor to section 552.108);

*see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the city may not withhold the previously released information we have marked under section 552.108 of the Government Code. However, we will discuss your arguments against disclosure of the remaining information.

Next we address your claim under section 552.108 of the Government Code for the remaining information, as it is potentially the most encompassing exception you raise. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) 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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

Although you state the submitted information consists of a completed investigation by the City of Victoria Fire Department (the “department”), you also state the information at issue relates to an incomplete investigation by the State Fire Marshal’s Office (the “fire marshal’s office”). *See generally* Open Records Decision No. 127 (1976) (providing that an arson investigation unit of a fire department is considered a law enforcement agency for purposes of section 552.108 of the Government Code). However, you do not state, nor have we received correspondence from the fire marshal’s office stating, that the fire marshal’s office objects to disclosure of the submitted information. Thus, we find you have failed to demonstrate how release of this information would interfere with the detection, investigation, or prosecution of crime. As such, we find the city may not withhold the remaining information under section 552.108(a)(1).

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 of the Government Code encompasses section 773.091 of the Health and Safety Code, which provides in relevant part:

- (b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or

maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091. Upon review, we find the information we have marked constitutes records of the identity, evaluation, or treatment of a patient by EMS personnel. Thus, with the exception of the information subject to section 773.091(g), the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

Section 552.101 also 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 we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked 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, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov’t Code § 552.130(a). Upon review, we find the city must withhold the motor vehicle record information we have marked in the submitted information under section 552.130 of the Government Code.<sup>1</sup> However, we find none of the remaining

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<sup>1</sup>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 id.* § 552.130(d), (e).

information consists of motor vehicle record information. Thus, none of the remaining information may be withheld under section 552.130.

Section 552.147(a) of the Government Code provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. We note the remaining information only contains a deceased individual’s social security number. Therefore, the city may not withhold any of the remaining information under section 552.147.

Section 552.1085 of the Government Code provides, in pertinent part, the following:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

(d) Notwithstanding Subsection (c) and subject to Subsection (e), the following persons may view or copy information that constitutes a sensitive crime scene image from a governmental body:

(1) the deceased person’s next of kin[.]

*Id.* § 552.1085(c), (d)(1). For purposes of section 552.1085, “sensitive crime scene image” means “a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person’s genitalia.” *See id.* § 552.1085(a)(6). Some of the submitted information consists of photographs that were taken at a crime scene as part of a criminal investigation that we understand is now closed. Upon review, we find some of these photographs, which we have indicated, consist of sensitive crime scene images for the purposes of section 552.1085 of the Government Code.

However, in this instance, the requestor may represent the next of kin of the deceased person depicted in these photographs. *See id.* § 552.1085(a)(1) (defining “deceased person’s next of kin”). Accordingly, the requestor would have a right to view or copy the submitted photographs pursuant to section 552.1085(d)(1). *See id.* § 552.1085(d)(1). As we are unable to determine whether the requestor represents the deceased person’s next of kin, we must rule conditionally. If the requestor does not represent the deceased person’s next of kin, the department must withhold the photographs we have indicated under section 552.1085(c) of the Government Code. If the requestor represents the deceased person’s next of kin, the department may not use section 552.1085(c) to withhold the photographs at issue from the requestor. In that situation, as you raise no further exceptions to withhold the photographs at issue, the department must release them to the requestor.

In summary, with the exception of the information subject to section 773.091(g), the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The city must also withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and the motor vehicle record information we marked under section 552.130 of the Government Code. If the requestor does not represent the deceased person's next of kin, the department must withhold the photographs we have indicated under section 552.1085(c) of the Government Code. 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Megan G. Holloway  
Assistant Attorney General  
Open Records Division

MGH/dls

Ref: ID# 510718

Enc. Submitted documents

c: Requestor  
(w/o enclosures)