



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2014

Mr. Richard L. Bilbie
Interim City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2014-02690

Dear Mr. Bilbie:

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# 514609.

The Harlingen Police Department (the "department") received a request for a specified incident report. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, 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 it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). We have marked the documents that are subject to section 552.022(a)(17). Although you seek to withhold this information under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions and do not make information confidential under the Act. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); 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 sections 552.103 and 552.108 do not make information confidential for the purposes of section 552.022. Accordingly, the court documents may not be withheld under section 552.103 or section 552.108. Further, although we understand you

to raise section 552.101 of the Government Code in conjunction with common-law privacy for the court-filed documents, information that has been filed with a court is not protected by common-law privacy. See *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Thus, the court-filed documents we have marked may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure of the court-filed documents, they must be released.

We now address section 552.108 of the Government Code for the information that is not subject to section 552.022 of the Government Code. Section 552.108 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 must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. See *id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the information at issue pertains to a pending criminal investigation and prosecution. Based on your representation and our review of the information, we find release of the information at issue would interfere with the detection, investigation, or prosecution of a crime. See *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref’d per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note, 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. Basic information must be released, even if it does not literally appear on the front page of the report. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

You also claim the basic information is subject to the doctrine of common-law privacy, which is encompassed by section 552.101 of the Government Code.² Common-law privacy

¹As our ruling under section 552.108 is dispositive, we need not address your argument under section 552.103, except to note that basic information may generally not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

²Section 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.

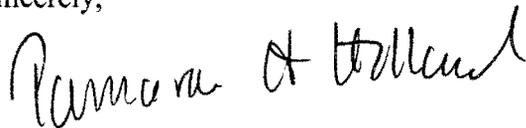
protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. Upon review, we find you have failed to demonstrate how any of the basic information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the basic information under section 552.101 in conjunction with common-law privacy.

In summary, the department must release the court documents, which we have marked, under section 552.022(a)(17) of the Government Code. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

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³Although basic information includes an arrestee's 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# 514609

Enc. Submitted documents

c: Requestor
(w/o enclosures)