



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 14, 2014

Ms. Delietrice Henry
Open Records Assistant
Plano Police Department
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Plano, Texas 75086-0358

Mr. David Ritter
Assistant City Attorney
City of Plano
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OR2014-02903

Dear Ms. Henry and Mr. Ritter:

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# 514312 (ORR# FEIL111913 and ORR# FEIN112513).

The Plano Police Department and the City of Plano (collectively the "city") received a request for (1) domestic violence incidents involving the requestor and a named individual at a specified address during a specified time period and (2) a second request from a different requestor for information pertaining to the second requestor and a named individual at the same address, including 9-1-1 call information. You state the city has released some of the responsive information to the requestors. The city claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the representative sample of submitted information.¹

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.

Section 552.108(a)(1) 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 must reasonably explain how and why section 552.108(a)(1) is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The city states release of case number 2013-00209407 would interfere with a pending criminal prosecution. Based on this representation and our review, we conclude section 552.108(a)(1) is generally applicable to case number 2013-00209407. *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*,(Tex. 1976).

We note, however, section 552.108 of the Government Code 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 Houston Chronicle*, 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*). The city must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. Thus, with the exception of basic information, the city may withhold case number 2013-00209407 from both requestors under section 552.108(a)(1).²

We note the remaining information is only responsive to the second request for information. The city claims portions of this information are subject to section 552.101 of the Government Code. Section 552.101 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 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

²Although 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). We note, however, the second requestor has a right of access to his own social security number. *See generally id.* §552.023. Accordingly, the city may withhold the arrestee’s social security number from the first requestor under section 552.147, but may not withhold this social security number from the second requestor on this basis. Furthermore, as our ruling is dispositive for this information, we need not address the city’s argument under section 552.101.

information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold from the second requestor the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city may not withhold from the second requestor any portion of the remaining information at issue under section 552.101 on that basis.

Next, the city claims portions of the remaining information are subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a)(2). Upon review, we find the city must generally withhold from the second requestor the motor vehicle record information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code. However, we note the second requestor may have an ownership interest in the marked motor vehicle. Because section 552.130 protects personal privacy, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a) (“A person . . . has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.”); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, if the second requestor has an ownership interest in the motor vehicle at issue, then the city may not withhold the marked information pertaining to that motor vehicle from this requestor under section 552.130. Conversely, if the second requestor does not have an ownership interest in the marked motor vehicle, then the city must withhold from the second requestor the marked information under section 552.130.³

In summary, with the exception of basic information, the city may withhold case number 2013-00209407 from both requestors under section 552.108(a)(1) of the Government Code. For the remaining information, which is only responsive to the second request, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Furthermore, if the second requestor has an ownership interest in the motor vehicle at issue, then the city may not withhold the marked information pertaining to that motor vehicle from this requestor under section 552.130 of the Government Code. Conversely, if the second requestor does not have an ownership interest in the marked motor vehicle, then the city must withhold from the second requestor the marked information under section 552.130. In either instance, the city must release the remaining information to the second requestor.

³We note 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 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).

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

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ac

Ref: ID# 514312

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)