



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2014

Sergeant Alex Arnold
Northlake Police Department
1400 FM 407
Northlake, Texas 76247

OR2014-07941

Dear Sergeant Arnold:

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# 522646.

The Northlake Police Department (the "department") received a request for information pertaining to a specified arrest. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record." Gov't Code § 552.022(a)(17). The submitted information contains court-filed documents, which we have marked, that are subject to subsection 552.022(a)(17) and must be released unless they are made confidential under the Act or other law. *See id.* You raise section 552.108 of the Government Code for this information. However, section 552.108 is a discretionary exception to disclosure that protects the governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Record Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the department may not withhold the information subject to section 552.022 of the Government Code under section 552.108. However, we will address the applicability of section 552.108 to the information not subject to section 552.022. We

will also address your arguments under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code for the information not subject to section 552.022 of the Government Code.

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 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). You state release of the submitted information will interfere with a pending criminal investigation and prosecution. We note, however, the submitted information includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. Copies of these forms were provided to the arrestee. We find you have not explained how releasing this information, which has already been provided to the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Accordingly, the DIC-24 and DIC-25 forms may not be withheld under section 552.108. However, based on your representation and our review, we conclude the release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *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*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the remaining information.

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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the DIC-24 and DIC-25 forms and basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

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. Section 552.101 encompasses information made confidential by other statutes. You argue the date of birth in the DIC-24 and DIC-25 forms is excepted from disclosure under section 552.101 in conjunction with section 32.51 of the Penal Code. Section 32.51(b) provides:

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

A person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of:

- (1) identifying information of another person without the other person's consent;
- (2) information concerning a deceased natural person, including a stillborn infant or fetus, that would be identifying information of that person were that person alive, if the item of information is obtained, possessed, transferred, or used without legal authorization; or
- (3) identifying information of a child younger than 18 years of age.

Penal Code § 32.51(b). "Identifying information" means "information that alone or in conjunction with other information identifies a person" and includes a person's date of birth. *Id.* § 32.51(a)(1)(A). You assert the date of birth in the information at issue meets the definition of "identifying information" under section 32.51(a)(1)(A) of the Penal Code. However, section 32.51(b) does not prohibit the transfer of identifying information of another person unless the transfer is made "with the intent to harm or defraud another[.]" *See id.* § 32.51(b). The department's release of the information at issue would be for the purpose of complying with the Act, and not with the intent to harm or defraud another. Therefore, section 32.51(b) of the Penal Code does not prohibit the department from transferring the requested information in this instance. Accordingly, we find the department may not withhold the date of birth in the information at issue under section 552.101 of the Government Code in conjunction with section 32.51 of the Penal Code.

You also argue the date of birth in the DIC-24 and DIC-25 forms is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code.² Section 521.051(a) of the Business and Commerce Code provides

[a] person may not obtain, possess, transfer, or use personal identifying information of another person without the other person's consent, and with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person's name.

Bus. & Com. Code § 521.051(a) (formerly Bus. & Com. Code § 48.101(a)). "Personal identifying information" is defined as "information that alone or in conjunction with other information identifies an individual" and includes an individual's date of birth.

²Although you cite to section 521.002 of the Texas Business and Commerce Code, that section defines terms for purposes of chapter 521 of the Business and Commerce Code and does not make information confidential.

Id. § 521.002(a)(1)(A). You assert the date of birth in the information at issue meets the definition of “personal identifying information” under section 521.002(a)(1) of the Business and Commerce Code. *See id.* § 521.002(a)(1). We note section 521.051(a) of the Business and Commerce Code does not prohibit the transfer of personal identifying information of another person unless the transfer is made with the intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person’s name without that person’s consent. *See id.* § 521.051(a). In this instance, the department’s release of the information at issue would be for the purpose of complying with the Act and not “with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value[.]” *See id.* Therefore, section 521.051(a) does not prohibit the department from transferring the information at issue. *See id.* We therefore conclude the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country is excepted from public release. *See Gov’t Code* § 552.130(a)(1). Accordingly, the department must withhold the information we marked in the DIC-24 and DIC-25 forms under section 552.130 of the Government Code.³

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Gov’t Code* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find you have not demonstrated how any of the remaining information consists of access device numbers for purposes of section 552.136. Accordingly, the department may not withhold any of the remaining information under section 552.136 of the Government Code.

We note basic information includes an arrestee’s social security number. You seek to withhold this information under section 552.147 of the Government Code. Section 552.147 provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). Therefore, the department may withhold the arrestee’s social security number under section 552.147(a) of the Government Code.⁴

In summary, the department must release the information we marked pursuant to section 552.022(a)(17) of the Government Code. Except for the DIC-24 and DIC-25 forms

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁴We note 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. *See Gov’t Code* § 552.147(b).

and basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing the DIC-24 and DIC-25 forms and basic information, the department must withhold the information we marked under section 552.130 of the Government Code and may withhold the arrestee's social security number under section 552.147 of the Government Code.

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 522646

Enc. Submitted documents

c: Requestor
(w/o enclosures)