



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 30, 2014

Mr. Michael Bloch  
Deputy District Attorney  
Ector County  
300 North Grant, Room 305  
Odessa, Texas 79761

OR2014-13149

Dear Mr. Bloch:

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# 531790.

The Ector County District Attorney's Office (the "district attorney's office") received a request for all records related to the investigation of a named officer. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note the submitted information includes search warrants subject to section 552.022. Section 552.022 of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000), 177 at 3 (1977). Therefore, the search warrants, contained in Exhibits 1.12, 1.13, and 1.34, may not be withheld under section 552.108. However, we note portions of the search warrants are subject to section 552.1175, which makes information confidential under the Act. Thus, we will address the applicability of section 552.1175 to the information subject to section 552.022(a)(17).

Section 552.108(a) 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: (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(a)(1) must reasonably explain how and why the release of the information at issue 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, 710 (Tex. 1977). You state the submitted information pertains to a pending criminal prosecution and that its release would interfere with the prosecution of the charged offenses. Based on these representations, 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, 186-87 (Tex. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the district attorney’s office may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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 the common-law right to privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

This office has concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). In this instance, the six complainants listed in the submitted information are also victims of sex-related offenses. We find the complainants’ identifying information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district attorney’s office must withhold the

complainants' identifying information from the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

We also note the search warrants and the basic information include information that may be subject to section 552.1175 of the Government Code. Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1998). We note the search warrants and basic information include the home address, personal cellular telephone number, and social security number of the arrestee. However, as we are unable to determine if the individual at issue is a currently licensed peace officer, we must rule conditionally. If the individual whose information is at issue is a currently licensed peace officer and elects to restrict access to the information in accordance with section 552.1175(b), then the district attorney's office must withhold his home address, personal cellular telephone number, and social security number under section 552.1175 of the Government Code. If the individual whose information is at issue is not a currently licensed peace officer, or no election is made, then the district attorney's office may not withhold his home address, personal cellular telephone number, and social security number under section 552.1175(b) of the Government Code.<sup>1</sup>

In summary, except for the information to be withheld under section 552.1175, the district attorney's office must release the search warrants contained in Exhibits 1.12, 1.13, and 1.34 under section 552.022(a)(17) of the Government Code. Except for basic information, the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing basic information, the district attorney's office must withhold (1) the six complainants' identifying information under section 552.101 of the Government Code in conjunction with common-law privacy, and (2) the home address, personal cellular telephone number if the district attorney's office does not pay for the service, and social security number of the arrestee under section 552.1175 of the Government Code, but only if the district attorney's office determines the individual is still a licensed peace officer, and an election is made under section 552.1175(b).

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.

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<sup>1</sup>We note, regardless of the applicability of section 552.1175, 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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

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,



Rustam Abedinzadeh  
Assistant Attorney General  
Open Records Division

RA/dls

Ref: ID# 531790

Enc. Submitted documents

c: Requestor  
(w/o enclosures)