



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 20, 2014

Ms. Sarah R. Martin  
Assistant City Attorney  
Legal Division  
City of Arlington Police Department  
P.O. Box 1065, Mail Stop 04-0200  
Arlington, Texas 76004-1065

OR2014-14694

Dear Ms. Martin:

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# 533389 (APD Ref. No. 15758).

The Arlington Police Department (the "department") received a request for information pertaining to two specified incidents. You claim the requested 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.

Section 552.108 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 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 11-40839 and 14-26305 relate to incidents that have not received a final disposition by the appropriate court of law. We note report number 11-40839 pertains to a misdemeanor assault that occurred in 2011. The statute of limitations for misdemeanor assault is two years from the date of the offense. *See* Crim. Proc. Code art. 12.02(b) (complaint or information for Class C misdemeanor may be presented within two years from date of commission of offense, and not afterward). We note more than two years have

elapsed since the events giving rise to the investigation in report number 11-40839, and you have not informed this office any criminal charges were filed within the limitations period. Further, you have not otherwise demonstrated how the release of report number 11-40839 would interfere with the detection, investigation, or prosecution of a crime. Therefore, we find you have not demonstrated the applicability of section 552.108(a)(1) of the Government Code to report number 11-40839. Thus, the department may not withhold report number 11-40839 on this basis. We find, however, that release of report number 14-26305 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. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). Accordingly, section 552.108(a)(1) generally is applicable to report number 14-26305.

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). We note basic information includes the identification and description of the complainant, as well as the home address of the complainant, if the address is the location of the crime, premises involved, or place of arrest. *See Open Records Decision No. 127 at 4 (1976)*. Thus, with the exception of basic information, the department may withhold report number 14-26305 under section 552.108(a)(1) of the Government Code.

Next, section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>1</sup> Gov’t Code § 552.101. Section 552.101 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 in report number 11-40839 satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked in report number 11-40839 under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the information in report number 11-40839 and some of the basic information in report number 14-26305 may be subject to section 552.1175 of the

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

Government Code. Section 552.1175 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). We note the information at issue is held in a law enforcement capacity and may be subject to section 552.1175. 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 department must withhold the information we have marked 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 department may not withhold the information we have marked under section 552.1175(b) of the Government Code.<sup>2</sup>

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license or motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130(a)(1)-(2). Accordingly, the department must withhold the information we have marked in report number 11-40839 under section 552.130 of the Government Code.

In summary, except for basic information, the department may withhold report number 14-26305 under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked in report number 11-40839 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.1175 of the Government Code, but only if the department determines the individual is still a licensed peace officer, and an election is made under section 552.1175(b). The department must withhold the information we have marked in report number 11-40839 under section 552.130 of the Government Code. The department must release the remaining basic information in report number 14-26305 and the remaining information in report number 11-40839.

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>2</sup>We note that 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. Therefore, even if section 552.1175 does not apply to the social security numbers at issue, the department may withhold these social security numbers under section 552.147.

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,



Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/bhf

Ref: ID# 533389

Enc. Submitted documents

c: Requestor  
(w/o enclosures)