



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 8, 2003

Ms. Lisa M. Salinas  
Custodian of Records  
Baytown Police Department  
3200 North Main Street  
Baytown, Texas 77521

OR2003-7127

Dear Ms. Salinas:

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# 189040.

The Baytown Police Department (the "Department") received similar requests for information from two separate requestors. The first requestor seeks a copy of police report number 2003-29216 and any related videotapes or photographs. The second requestor also asks for access to police report number 2003-29216 and in addition, police report number 2003-30439. You state the Department will release some information to the requestors. However, you assert portions of the requested information are excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We reviewed the representative sample of information you submitted and considered the exceptions you claim.<sup>1</sup>

Initially, we note that the submitted information includes documents produced in response to a grand jury subpoena. Article 20.02 of the Code of Criminal Procedure provides for the secrecy of grand jury proceedings. This office has concluded that grand juries are not governmental bodies subject to chapter 552 of the Government Code, so records within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent

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<sup>1</sup> We assume 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 those records contain substantially different types of information than that submitted to this office.

is within the grand jury's constructive possession and is not subject to chapter 552. *Id.* at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld only if a specific exception to disclosure is applicable. *Id.* Thus, because a portion of the information was obtained pursuant to a grand jury subpoena or at the direction of the grand jury, this information, which we have marked, is in the custody of the Department as agent of the grand jury and is not subject to disclosure under chapter 552. *Id.* at 4.

Next, we address your claims under section 552.108 of the Government Code, also known as the "law enforcement exception." This provision provides, in relevant part, as follows:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (a)(2). You contend that most of the submitted information is excepted from disclosure under subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code. Generally speaking, the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) are mutually exclusive. Subsection 552.108(a)(1) applies to information held by law-enforcement agencies that pertains to pending criminal investigations or prosecutions whereas subsection 552.108(a)(2) protects law enforcement records that pertain to criminal investigations and prosecutions that have concluded in a result other than a criminal conviction or deferred adjudication. Based on our review of the submitted information and your arguments, we understand you to assert that the information you have highlighted in orange relates to a pending criminal investigation. Therefore, we conclude that you have met your burden of demonstrating the applicability of subsection 552.108(a)(1) and have established that release of the information "would interfere with the detection, investigation, or prosecution of crime." *See* Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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 believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision

No. 127 (1976) (summarizing types of information considered basic information). Thus, with the exception of basic front page offense and arrest information, we conclude that the Department may withhold the submitted information at issue under section 552.108 of the Government Code.<sup>2</sup> The Department has the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

Further, with respect to the submitted information for which you do not assert section 552.108, we address other applicable exceptions to required public disclosure. Section 552.101 of the Government Code excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy and confidentiality provisions of other statutes. Common-law privacy protects information when (1) it contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that some medical information or information indicating disabilities or specific illnesses warrants protection under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). In this instance, police report number 2003-30439 contains information protected by common-law privacy. Therefore, the Department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, the submitted information remaining at issue contains social security numbers that may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* We have no basis for concluding that the social security numbers in the responsive records are confidential under section 405(c)(2)(C)(viii)(I), and therefore, excepted from public disclosure under section 552.101 and the referenced federal provision. However, we caution the Department that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, you should ensure

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<sup>2</sup> As we make this determination, we need not address your arguments under section 552.103 of the Government Code for this information, except to note that section 552.103 generally does not apply to basic information released under section 552.108(c). See Open Records Decision No. 597 (1991).

that no such information was obtained or is maintained by the Department pursuant to any provision of law enacted on or after October 1, 1990.

Last, as you note, section 552.130 of the Government Code governs some of the remaining information. This provision excepts from public disclosure information relating to a driver's license or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. In this case, we agree that the information at issue contains motor vehicle information, which you have highlighted in pink. Therefore, the Department must withhold this information under section 552.130 of the Government Code.

In summary, the Department need not release the portion of the information, which we have marked, that was obtained pursuant to a grand jury subpoena or at the direction of the grand jury because it is not subject to disclosure under chapter 552. The Department may withhold the information you have highlighted in orange under subsection 552.108(a)(1) of the Government Code. With respect to the remaining information, the Department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Also under section 552.101 and if applicable, the Department must withhold social security numbers pursuant to federal law. The Department must withhold the motor vehicle information you have highlighted in pink under section 552.130 of the Government Code. The Department must release the rest of the submitted information in accordance with each request.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 189040

Enc: Submitted documents

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