



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2006

Chief Timothy Guin
Wharton Police Department
220 South Fulton
Wharton, Texas 77488

OR2006-00895

Dear Chief Guin:

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# 241762.

The Wharton Police Department (the "department") received a request for a specified incident report. You claim that the requested report 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(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." Generally, 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* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you state that release of the submitted report would interfere with the detection, investigation, or prosecution of crime. However, you have not stated that the submitted report pertains to an ongoing criminal investigation or prosecution, nor have you otherwise explained how release of the submitted report would interfere in some way with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1); *see also* Open Records Decision No. 562 at 10 (1990) (governmental body has burden of explaining how and why release of information would interfere with law enforcement and crime prevention). Therefore, you

have not met your burden under section 552.108 and the submitted report may not be withheld under this section.

We note, however, that the submitted report contains information that must be withheld under sections 552.101, 552.130, and 552.147 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses the common law right to privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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. 540 S.W.2d at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982); an individual’s criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (1990) (citing *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)). We have reviewed the submitted report and marked the information that must be withheld pursuant to section 552.101 in conjunction with common law privacy. *See* Open Records Decision No. 659 at 5 (1999) (listing types of information that attorney general has held to be protected by right to privacy).

Section 552.130 of the Government Code excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle record information we have marked. We note that the department may not withhold the Texas motor vehicle record information belonging to the requestor because the requestor has a special right of access to such information. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on grounds that information is considered confidential by privacy principles).

Section 552.147 of the Government Code¹ provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the

¹Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon).

department must withhold the social security numbers we have marked under section 552.147.²

In summary, the department must withhold the information we have marked under section 552.101, 552.130, and 552.147 of the Government Code. The remainder of the submitted report must be released to this requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

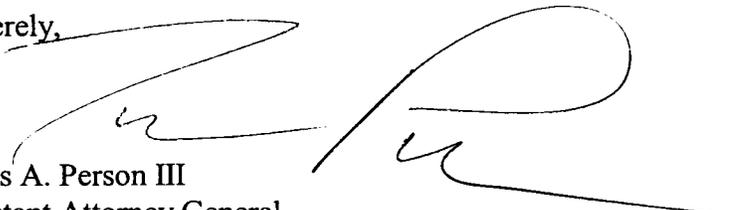
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

²We 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.

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 Office of the Attorney General 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. 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,


James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 241762

Enc. Submitted documents

c: Ms. Melanie Krenek
307 East Belle Avenue
Wharton, Texas 77488
(w/o enclosures)