



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 14, 2009

Mr. Jason Day  
City Attorney  
Royse City  
P.O. Box 638  
Royse City, Texas 75189

OR2009-00574

Dear Mr. Day:

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# 332242 (City ID# RCCA08-0111).

The City of Royse City (the "city") received a request for the entire file pertaining to a specified incident. You state that the city has made some of the requested information available to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that a portion of the submitted information is subject to section 552.101 of the Government Code.<sup>1</sup> 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. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.101 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 demonstrated. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision No. 545 (1990). The submitted information contains lien information that constitutes personal financial information. We find that there is not a legitimate public interest in the release of this information. Accordingly, the city must withhold the lien information that we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 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), (2). The protections offered by subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code are, generally, mutually exclusive. Section 552.108(a)(1) generally applies to information that pertains to criminal investigations or prosecutions that are currently pending, while section 552.108(a)(2) protects law enforcement records that pertain to criminal investigations and prosecutions that have concluded in final results other than criminal convictions or deferred adjudication. A governmental body claiming section 552.108(a)(1) 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). A governmental body that claims section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See* Gov't Code §§ 552.108(a)(2), .301(e)(1)(A). You state that the submitted information relates to an ongoing criminal investigation. Based upon this representation, we conclude that the release of the information you have marked in green, the submitted CD, and the submitted DVD 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), *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). Thus, the information you have marked in green, the submitted CD, and the submitted DVD may be withheld under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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(a)(1), (2). The city must withhold the information you have marked in red, in addition to the information we have marked, under section 552.130 of the Government Code.

Lastly, you assert that the social security number you have marked in purple is excepted under section 552.147 of the Government Code, which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.<sup>3</sup> *Id.* § 552.147. Therefore, the city may withhold the social security number you have marked in purple pursuant to section 552.147 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The city may withhold the information you have marked in green, the submitted CD, and the submitted DVD under section 552.108(a)(1) of the Government Code. Next, the city must withhold the information you have marked in red, as well as the information we have marked, under section 552.130 of the Government Code. Finally, the city may withhold the social security number you have marked under section 552.147 of the Government Code. The remaining information must be released to the requestor.<sup>4</sup> 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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php),

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<sup>2</sup>As our ruling for this information is dispositive, we need not address your remaining argument for a portion of the information.

<sup>3</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 officer under the Act. Gov’t Code § 552.147(b).

<sup>4</sup>We note that a portion of the information being released would ordinarily be protected from disclosure under section 552.130 of the Government Code. In this instance, however, the requestor has a right of access to that information under section 552.023. *See* Gov’t Code § 552.023. In the event the city receives another request for this information from someone other than this requestor, the city must again ask this office for a ruling. *See id.* §§ 552.301(a), .302.

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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Greg Henderson".

Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/jb

Ref: ID# 332242

Enc. Submitted documents

c: Requestor  
(w/o enclosures)