



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2009

Mr. George A. Young
Assistant County Attorney
Harris County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002

OR2009-00990

Dear Mr. Young:

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# 333086.

The Harris County Constable Precinct 4 (the "constable") received a request for the 9-1-1 call recording and all other records related to a specified incident. 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(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). 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state "[t]he [constable] objects to the release of [the submitted information] because the matter is still under investigation/prosecution as set forth in the submitted affidavit[.]" However, the submitted affidavit states "[t]he [constable] opposes the disclosure of such records because such records constitute 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" and "[c]riminal charges in this case were dismissed

by the Harris County Judge [p]residing.” Because these statements contradict and you have not otherwise explained this contradiction, we find you have failed to establish that section 552.108(a)(1) is applicable in this instance. Therefore, no portion of the submitted information may be withheld under section 552.108 of the Government Code.

We note, however, that some of the submitted information is subject to sections 552.101 and 552.130 of the Government Code.¹ Section 552.101 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 doctrine of common-law privacy, which protects information that (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 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). Therefore, the constable must withhold the lien information we have marked under section 552.101 of the Government Code in conjunction with common-law 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. We note, however, that because this exception protects personal privacy, the requestor has a right of access to her own Texas motor vehicle record information pursuant to section 552.023 of the Government Code.² *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). However, the constable must withhold the Texas motor vehicle record information not belonging to the requestor, which we have marked, pursuant to section 552.130. The constable must also withhold the Texas motor vehicle record information that does not belong to the requestor contained in the submitted photographs pursuant to section 552.130 of the Government Code.

In summary, the constable must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The

¹The 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).

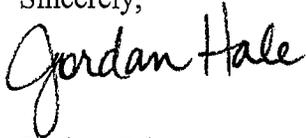
²Section 552.023(a) provides that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a).

marked Texas motor vehicle record information, as well as the Texas motor vehicle record information not belonging to the requestor in the submitted photographs, must be withheld pursuant to section 552.130 of the Government Code.³ The remaining information must be released.⁴

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, 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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 333086

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

³We note that some of the information being released is confidential and not subject to release to the general public. Because such information may be confidential with respect to the general public, if the constable receives another request for this information from an individual other than this requestor, the constable should again seek our decision.

⁴We note that the remaining information contains social security numbers. 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. However, the requestor has a right of access to her social security number pursuant to section 552.023 of the Government Code. See Gov't Code § 552.023.