



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2009

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2009-01044

Dear Mr. Hager:

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# 333252.

The Allen Police Department (the "department"), which you represent, received a request for information relating to a named police officer, including personnel records and incident or arrest reports involving the officer and a specified time interval. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted, some of which is a representative sample.¹

We first note that the named officer's address and social security number and other information have been redacted from the submitted documents. A governmental body that seeks to withhold requested information from the public must submit the information to the attorney general in a manner that enables this office to determine whether the information is excepted from disclosure. *See* Gov't Code § 552.301(e)(1)(D). In this instance, the request for information states that the department "may redact any information concerning

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

[the named] officer's social security number or place of residence." Moreover, the previous determination issued in Open Records Decision No. 670 (2001) authorizes the redaction of a peace officer's home address and telephone number, personal cellular phone and pager number, social security number, and family member information pursuant to section 552.117(a)(2) of the Government Code without the necessity of requesting a decision under section 552.301 of the Government Code. *See* ORD 670 at 6 (addressing statutory predecessor to Gov't Code § 552.117(a)(2)). Additionally, 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. Thus, the department has authorization to redact the officer's social security number, current and former home addresses, and certain other personal information.² The department has no authorization, however, to redact any other responsive information without requesting a decision by this office under section 552.301. In this instance, we are able to ascertain the nature of the rest of the redacted information and thus are not prevented from determining whether it is excepted from disclosure. In the future, however, the department should refrain from redacting any responsive information other than a living person's social security number that is submitted to the office in connection with a request for a decision under the Act, unless the information is the subject of a previous determination. *See* Gov't Code §§ 552.301(a), .302.

We next note that some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. *Id.* § 552.022(a)(1). In this instance, the submitted information includes completed reports and evaluations. You seek to withhold that information under section 552.103 of the Government Code, which is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (Gov't Code § 552.103 may be waived); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022(a)(1). Therefore, the department may not withhold any of the information that is subject to section 552.022(a)(1) under section 552.103. However, we will determine whether any of the remaining information may be withheld under that exception. We also will consider the department's claim under section 552.108.

Section 552.103 provides in part:

²We have marked other references to the officer's social security number that were not redacted from the submitted documents.

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information at issue. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You state that the remaining information is related to a pending prosecution in which the requestor represents the defendant. You do not inform us, however, that the department is or may become a party to the case. *See Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990).* Under such circumstances, we require an affirmative representation that a governmental entity that is a party to a pending case wishes to have information relating to the case withheld from disclosure. In this instance, you have not provided this office with such a representation. We therefore conclude that the department may not withhold any of the remaining information under section 552.103 of the Government Code.

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). The submitted information includes a series of police reports, including reports relating to the arrest that is the subject of the pending prosecution. Having considered your arguments, we conclude that section 552.108(a)(1) is generally applicable to the information pertaining to

the pending prosecution. We have marked that information. *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).

We note that 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the marked information that is related to the pending prosecution under section 552.108(a)(1).

You state that the remaining police reports “may constitute the record and report of a pending case. Releasing the documents would interfere with the further investigation of the crime, as well as future investigation, detection and prosecution of similar crimes.” Having considered your arguments, we find that you have not adequately demonstrated that the release of any of the remaining information at issue would interfere with the detection, investigation, or prosecution of crime. We therefore conclude that the department may not withhold any of the remaining information under section 552.108.

We note that sections 552.101, 552.117, 552.130, and 552.136 of the Government Code are applicable to some of the remaining information.³ 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 exception encompasses information that other statutes make confidential. Section 58.007 of the Family Code provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

³Unlike other exceptions to disclosure, this office will raise sections 552.101, 552.117, 552.130, and 552.136 on behalf of a governmental body, as these exceptions are mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c); *see id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of Fam. Code tit. 3). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. We have marked information involving a juvenile offender that the department must withhold under section 552.101 in conjunction with section 58.007 of the Family Code.

The submitted information also includes a crash report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer’s accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has not provided the department with two of the three specified items of information. Therefore, the department must withhold the crash report that we have marked pursuant to section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy protects certain types of personal financial information. Financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990)

(attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). We have marked personal financial information that the department must withhold under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. Although the requestor does not seek access to the named officer's social security number and home address, which the department would ordinarily be required to withhold under section 552.117(a)(2), the submitted documents also contain other types of redacted and unredacted information that the department must withhold under this exception. We have marked the types of information that the department must withhold under section 552.117(a)(2).

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). We have marked Texas driver's license and motor vehicle information that the department must withhold under section 552.130. We note that this exception is not applicable to out-of-state driver's license and motor vehicle information.

Section 552.136 of the Government Code provides in part that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). We have marked bank account numbers that the department must withhold under section 552.136.

In summary: (1) the department may withhold the marked information that is related to the pending prosecution under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c); (2) the department must withhold the marked information that is confidential under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, section 550.065 of the Transportation Code, and common-law privacy; and (3) the department also must withhold the information that we have marked under sections 552.117(a)(2), 552.130,

and 552.136 of the Government Code.⁴ The rest of the submitted information must be released.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is stylized with a large initial "J" and a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 333252

Enc: Submitted information

c: Requestor
(w/o enclosures)

⁴We note that the submitted information also includes the social security numbers of individuals other than the named officer. 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. The requestor has a right, however, to her client's social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).