



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2009

Mr. Ernest W. Gassiott
City Attorney
City of Woodville
400 West Bluff
Woodville, Texas 75979

OR2009-02737

Dear Mr. Gassiott:

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# 336068.

The City of Woodville (the "city") received a request for information pertaining to a specified fire.¹ You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. You also explain that the requested information may contain proprietary information subject to exception under the Act. Accordingly, you state, and submit documentation demonstrating, you have notified Texas Farm Bureau Insurance of this request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d)*; Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted information.

¹You state the city asked for and received clarification regarding this request. *See Gov't Code § 552.222(b)* (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification).

Initially, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. See Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received any correspondence from Texas Farm Bureau Insurance. Thus, Texas Farm Bureau Insurance has not demonstrated that it has a protected proprietary interest in any of the submitted information and the city may not withhold it on that basis. See *id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

You assert that Exhibits B through E are excepted from disclosure under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." Gov't Code § 552.108(b)(1). 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.* § 552.301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You indicate that the submitted information relates to a pending criminal investigation being conducted by the city's fire department. Based on this representation, we conclude that the release of this information 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, we agree that section 552.108(b)(1) is generally applicable to Exhibits B through E.

We note, however, 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). Basic information refers to the information held to be public in *Houston Chronicle*. See S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold Exhibits B through E under section 552.108(b)(1) of the Government Code. We note the city has the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² *Id.* § 552.101. This section 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (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. *Id.* at 683. Additionally, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review, we find that portions of the remaining information are highly intimate or embarrassing and not of legitimate public interest. Thus, the city must generally withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy. However, we note that the requestor is the spouse of the individual whose private information is at issue. As such, he may be the authorized representative of that individual and, thus, have a right of access to the marked information. *See Gov't Code* § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, if the requestor is the authorized representative of his spouse, he has a right of access to the marked private information pertaining to his spouse and the city may not withhold this information under section 552.101. If the requestor is not the authorized representative of his spouse, he does not have a right of access to the marked information and the city must withhold it under section 552.101 in conjunction with common-law privacy.

We note that the remaining documents contain information subject to section 552.130 of the Government Code. Section 552.130 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

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

§ 552.130(a)(1), (2). However, we note that most of the Texas motor vehicle record information at issue belongs to the requestor and his spouse. As such, the requestor has a right of access to his own Texas motor vehicle record information pursuant to section 552.023. *See id.* § 552.023. Furthermore, as noted above, the requestor has a right of access to his spouse's Texas motor vehicle record information, if he is acting as her authorized representative. *See id.* Thus, if the requestor is seeking the information as the authorized representative of his spouse, then he has a right of access to his spouse's Texas driver motor vehicle record information, and the city may not withhold this information under section 552.130. If the requestor is not seeking the information as his spouse's authorized representative, then the city must withhold his spouse's the Texas motor vehicle record information, which we have marked, under section 552.130. In addition, the city must withhold the Texas motor vehicle record information pertaining to other individuals, which we have also marked, pursuant to section 552.130 of the Government Code.

We note that a portion of the remaining information is subject to section 552.136 of the Government Code. Section 552.136 states that "[n]otwithstanding any other provision of this chapter, 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. Accordingly, we find that the city must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code.

In summary, with the exception of basic information, the city may withhold Exhibits B through E under section 552.108(b)(1) of the Government Code. To the extent the requestor is not his spouse's authorized representative, the city must withhold the marked information, pertaining to her, under: (1) section 552.101 of the Government Code in conjunction with common-law privacy; and (2) section 552.130 of the Government Code. The city must withhold the remaining information we have marked, which pertains to other individuals, under section 552.130 of the Government Code. The city must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code. The remaining information must be released.³

³The requested information contains social security numbers subject to section 552.147 of the Government Code. Section 552.147(b) 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. Gov't Code § 552.147. Section 552.147 is based on privacy concerns. Accordingly, pursuant to section 552.023, the requestor has a right of access to his own social security number, as well as his spouse's social security number if he is acting as her authorized representative. The city may withhold the remaining social security numbers under section 552.147. In addition, we note that the information being released contains confidential information to which the requestor has a right of access. *See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987).* However, if the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 336068

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Texas Farm Bureau
P.O. Box 2689
Waco, Texas 76702-2689
(w/o enclosures)