



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2009

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2009-05120

Dear Ms. Smith:

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# 338842 (OR 09-0171).

The Texas Department of Public Safety (the "department") received a request for the administrative license revocation files of thirteen named individuals. You state you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from a representative of the requestor. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

Initially, we note a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-04230 (2009). With regard to the submitted information that is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the department may continue to rely on Open Records Letter No. 2009-04230 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent

the submitted information is not encompassed by the previous ruling, we will address the submitted arguments.

You raise section 552.108 of the Government Code for a portion of the submitted information. Section 552.108(a) 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). We note the submitted information includes notices of suspension and statutory warnings. Because these documents have been provided to the individuals who were arrested, we find release of these documents will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the department may not withhold the notices of suspension and statutory warnings, which we have marked, under section 552.108(a)(1). You state that the remaining information marked as Attachments C, D, and E relates to pending criminal prosecutions. Based upon 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to the remaining information in Attachments C, D, and E.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming 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. Gov’t Code §§ 552.108(a)(2), .301(e)(1)(A). You state that Attachment B pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

However, section 552.108 is inapplicable to 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* 531 S.W.2d at 186-87. Basic information includes, among other things, an arrestee’s name, social security number, alias, race, sex, age, and address. *See id.* at 179-80, 185-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note the basic information described in *Houston Chronicle* does not include information subject to section 552.130 of the Government Code. Therefore, the department must generally 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. You claim, however, that a portion of the notices of suspension, statutory warnings, and basic information consists of "personal information" under section 730.003(6) of the Transportation Code that must be withheld under section 552.130 of the Government Code and section 730.004 of the Transportation Code. Therefore, we will address your argument for this information, as well as the remaining submitted information.

You assert that the remaining information at issue is excepted under section 552.130 of the Government Code, which provides in relevant part the following:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130. Generally, under section 552.130, the department may release information relating to a Texas driver's license only if, and in the manner, authorized by chapter 730 of the Transportation Code.

The purpose of chapter 730 of the Transportation Code, also known as the Motor Vehicle Records Disclosure Act, is to "protect the interest of an individual in the individual's personal privacy by prohibiting the disclosure and use of personal information contained in motor vehicle records, except as authorized by the individual or by law." Transp. Code § 730.002. Section 730.003 of the Transportation Code provides that, for purposes of chapter 730:

(1) "Agency" includes any agency or political subdivision of this state, or an authorized agent or contractor of an agency or political subdivision of this state, that compiles or maintains motor vehicle records.

(4) "Motor vehicle record" means a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document. The term does not include:

(A) a record that pertains to a motor carrier; or

(B) an accident report prepared under Chapter 550 or 601 [of the Transportation Code].

(6) "Personal information" means information that identifies a person, including an individual's photograph or computerized image, social security number, driver identification number, name, address, but not the zip code, telephone number, and medical or disability information. The term does not include:

(A) information on vehicle accidents, driving or equipment-related violations, or driver's license or registration status; or

(B) information contained in an accident report prepared under Chapter 550 or 601.

Id. § 730.003(1), (4), (6). Section 730.004 provides as follows:

Notwithstanding any other provision of law to the contrary, including Chapter 552, Government Code, except as provided by Sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

Id. § 730.004. Thus, except as provided by sections 730.005 through 730.007, section 730.004 does not permit the release of "personal information" obtained by an "agency" in connection with a "motor vehicle record."

We find that the department is an "agency" for purposes of chapter 730. *See* Transp. Code § 730.003(1). Furthermore, the remaining information qualifies as "motor vehicle records," as defined by section 730.003(4). Section 730.007 of the Transportation Code enumerates the requestors who are eligible to receive information from the department. The requestor here is not one of the persons listed in section 730.007. Therefore, to the extent that the submitted information consists of "personal information" under section 730.003(6), the department may not release such information. *See id.* § 730.004; *see also id.* §§ 730.005,

.006, .007. We have marked representative samples of information that must be withheld from disclosure under section 552.130 of the Government Code in conjunction with section 730.004 of the Transportation Code. However, none of the remaining information constitutes "personal information" for the purpose of Chapter 730, and no portion may be withheld on that basis.

We note that a portion of the remaining information is subject to sections 552.101 and 552.136 of the Government Code.¹ 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. 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). The types 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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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." Gov't Code § 552.136. Accordingly, we have marked representative samples of the information the department must withhold pursuant to section 552.136 of the Government Code.

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2009-04230, the department may continue to rely upon that ruling as a previous determination and withhold or release the identical information in accordance with that ruling. With the exception of the notices of suspension, statutory warnings, and basic information, the department may withhold Attachments B, C, D, and E under section 552.108 of the Government Code. In releasing the notices of suspension, statutory warnings, and basic information, the department

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).

must withhold the information subject to section 552.130 of the Government Code in conjunction with section 730.004 of the Transportation Code. We have marked representative samples of the types of information the department must withhold under section 552.130 of the Government Code in conjunction with section 730.004 of the Transportation Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We have marked representative samples of the types of information the department must withhold pursuant to section 552.136 of the Government Code. The remaining 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 338842

Enc. Submitted documents

cc: Requestor
(w/o enclosures)