



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2009

Mr. Mark G. Mann
Assistant City Attorney
P.O. Box 469002
Garland, Texas 75046-9002

OR2009-05974

Dear Mr. Mann:

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# 341990 (identification numbers GCA09-0125, GCA09-0127, and GCA09-0129).

The Garland Police Department (the "department") received three requests for records pertaining to a specified incident. You claim that portions of the submitted information are 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.

Initially, you inform us that incident report number 2009R002454 was the subject of a previous open records request in response to which this office issued Open Records Letter No. 2009-02277 (2009). In that ruling, we determined that portions of report number 2009R002454 may be withheld under section 552.108(a)(1) of the Government Code and that portions of the report must be withheld under section 552.130 of the Government Code. As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the department must continue to rely on that ruling as a previous determination and withhold or release incident report number 2009R002454 consistent with the prior ruling.¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and 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).

¹As our ruling is dispositive of incident report number 2009R002454, we need not address your arguments against its disclosure.

We will now address your arguments against disclosure for the remaining submitted information. Section 552.108(a)(1) 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to an ongoing investigation. Based on your representation and our review of the submitted information, 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, the department may withhold the information you have marked in red under section 552.108(a)(1) of the Government Code.

Next, section 552.101 excepts “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. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (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. 540 S.W.2d at 683. Upon review, we find that none of the submitted information is intimate or embarrassing and of no legitimate public interest. Thus, no portion of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

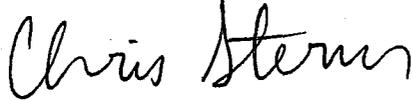
Next, section 552.130 of the Government Code excepts from disclosure information relating to a Texas motor vehicle driver’s license and registration information. Gov’t Code § 552.130(a)(1). We find that section 552.130 is applicable to the information we have marked. We note, however, that the Texas driver’s license number we have marked belongs to one of the requestors. This requestor has a right of access to his Texas driver’s license number under section 552.023 of the Government Code, and that information may not be withheld from this requestor under section 552.130. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, with the exception of the requestor’s driver’s license number that must be released to that requestor, the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, (1) the department must continue to rely on Open Records Letter No. 2009-02277 (2009) as a previous determination and withhold or release incident report number 2009R002454 consistent with the prior ruling; (2) within the remaining information, the department may withhold the information you have marked in red under section 552.108(a)(1) of the Government Code; and (2) with the exception of the requestor's driver's license number that must be released to that requestor, the department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released to the respective requestors.²

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/cc

Ref: ID# 341990

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note that the information being released contains a social security number. 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, because one of the requestors has a right of access to the social security number at issue under section 552.023 of the Government Code, the department may not withhold the social security number at issue from this requestor under section 552.147 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).