



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2009

Mr. Mack Reinwand
Assistant City Attorney
Arlington Police Department
Legal Division
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2009-08000

Dear Mr. Reinwand:

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# 345679 (Arlington Police File No. 2009-03-138).

The Arlington Police Department (the "department") received a request for information relating to a specified accident involving a hit and run. You have marked certain information as having been released to the requestor. You claim that the remaining submitted 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.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or

representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, the department received two requests from the same requestor for the information at issue. The department received the initial request for information on January 20, 2009 but withheld information from the requestor, and did not request a ruling from our office until April 6, 2009, or submit the requested information for our review until April 7, 2009, in response to the second request.¹ Consequently, we find that the department failed to comply with the procedural requirements of section 552.301 with regards to the first request.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). In failing to comply with section 552.301, the department has waived its claim under section 552.108. Therefore, the department may not withhold any of the submitted information that was responsive to the first request under section 552.108 of the Government Code. Section 552.101 can provide a compelling reason to overcome this presumption; therefore, we will consider this section for the submitted information that existed at the time of the first request. Next, we address the second request, which the department received on March 24, 2009, for the submitted information. We find that with regards to the second request, the department has complied with the procedural requirements of section 552.301 for the portion of the submitted information that did not exist at the time of the initial request; therefore, we will address the department's argument under section 552.108 for this information.

Next, we note that motor vehicle record information has been redacted from the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code §§ 552.301(a), .301(e)(1)(D). You do not assert, nor does our review of our

¹We note that you state that the "documents at issue here (Exhibit B) are those that were not previously provided to the requestor."

records indicate, that the department is authorized to withhold the redacted information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the department should refrain from redacting any information for which it is not authorized.

The submitted information includes a CR-3 accident report supplement that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code §§ 550.064 (officer's accident report) 550.068 (changing accident report). Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. Section 552.101 encompasses section 550.065(b) of the Transportation Code which deems accident reports privileged and confidential. *See id.* § 550.065(b). However, 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.* You do not indicate that you have provided this form, which supplements the CR-3 accident form already released, to the requestor. In this case, the requestor provided the department with all three specified items of information in both his original and current requests. Therefore, if the department has not already done so, it must release the accident report supplement we have marked pursuant to section 550.065(c)(4) of the Transportation Code.

Section 552.101 also 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. *See Industrial Found. v. Texas 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. *See* 540 S.W.2d at 683. Furthermore, this office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential); 545 (1990) (deferred compensation information,

²The Office of the Attorney General will raise mandatory exceptions like section 552.101, 552.130, and 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history); 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373(1983) (common-law privacy protects assets and income source information). We have marked the information the department must withhold under section 552.101 in conjunction with common-law privacy.

The submitted information contains Texas motor vehicle record information subject to section 552.130 of the Government Code. This section excepts from disclosure information that relates 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). Thus, the department must withhold the information we have marked that relates to a Texas motor vehicle license, title, or registration pursuant to section 552.130.

The submitted information also contains insurance policy numbers subject to section 552.136 of the Government Code, which provides 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(b); *see also* § 552.136(a) (defining "access device"). The department must withhold the policy numbers we have marked pursuant to section 552.136 of the Government Code.

We now turn to your argument under section 552.108(a)(1) of the Government Code for the information created after the date of the first request that was submitted in compliance with section 552.301 of the Government Code. Section 552.108(a)(1) 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.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that the information at issue includes a statutory warning. Because this document has been provided to the individual who was arrested, we find that release of this document will not interfere with the detection, investigation, or prosecution of crime. You state that the remaining information at issue pertains to a pending criminal investigation. Based on your representation and our review, we conclude that section 552.108(a)(1) is applicable to this 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). Therefore, the department may withhold the witness statement we have marked under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.130 of the Government Code. The department must withhold the information we have marked under section 552.136 of the Government Code. The department may withhold the submitted witness statement we have marked under section 552.108(a)(1) 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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/rl

Ref: ID# 345679

Enc: Submitted documents

c: Requestor
(w/o enclosures)