



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2009

Mr. David K. Walker
Montgomery County Attorney
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2009-09412

Dear Mr. Walker:

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# 348238.

The Montgomery County Sheriff's Department (the "sheriff") received two requests for all video and audio recordings, including recorded telephone calls, dispatch radio communications, and mobile data transmissions that occurred on a particular date and between a specified time period. You state the sheriff will release the requested mobile data transmissions. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) 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: (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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide an affidavit from an assistant district attorney for Montgomery County reflecting, that the submitted information relates to a pending criminal prosecution. Based on these representations and our review, we conclude release of the information at issue 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, we find section 552.108(a)(1) is applicable to the submitted information.

However, 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. Thus, basic information may not be withheld under section 552.108. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In Open Records Decision No. 649 at 3 (1996), this office concluded that information contained in Computer-Aided Dispatch ("CAD") reports is substantially the same as basic information specifically held to be public in *Houston Chronicle* and therefore is not excepted from public disclosure under section 552.108. See also Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in police dispatch records or radio logs and front page offense report information expressly held to be public in *Houston Chronicle*, and thus, such information is generally public). The submitted information includes a dispatch report; therefore, as basic information, this report may not be withheld under section 552.108 of the Government Code.

We next address section 552.101 of the Government Code for the dispatch report. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). The information we have marked constitutes personal financial information. Therefore, the sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We also note that some of the remaining information in the submitted dispatch report is subject to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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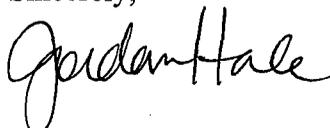
permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130. Accordingly, the sheriff must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.

In summary, with the exception of basic information, the sheriff may withhold the submitted information under section 552.108 of the Government Code. The sheriff must, however, withhold the basic information we have marked in the dispatch report under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. The remaining basic 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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/eb

Ref: ID# 348238

Enc. Submitted documents

cc: Requestor
(w/o enclosures)