



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-10470

Dear Ms. Byles:

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# 350433 (Public Information Request No. 3567-09).

The City of Fort Worth (the "city") received a request for incident report number 09-49739. You claim that the requested 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)(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." 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* Gov't Code §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that the submitted information includes a citation, which we have marked. Because a copy of the citation has been provided to the individual who was cited, we find that release of the citation will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the city may not withhold the citation under section 552.108(a)(1). You state and provide supporting documentation showing that the Tarrant County District Attorney's Office objects to the release of the remaining information because it relates to a currently

pending criminal prosecution. Based on these representations, 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); see also Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). Thus, section 552.108(a)(1) is generally applicable to the remaining information.

We note 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). 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. The city must generally release basic information, including a detailed description of the offense and the names of the arresting and investigating officers, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

You claim that the name and identification number of the undercover officer are confidential pursuant to common-law privacy and “special circumstances.” You argue that release of this information “would likely cause the [officer] to face ‘imminent threat of physical danger’” and therefore special circumstances exist under common-law privacy to withhold the identity of this officer. However, the Third Court of Appeals recently ruled that the “special circumstances” exception found in past Attorney General Open Records Decisions directly conflicts with Texas Supreme Court precedent regarding common-law privacy. *Tex. Dep’t of Pub. Safety v. Cox Tex. Newspapers, L.P. and Hearst Newspapers, L.L.C.*, No. 03-08-00516-CV, 2009 WL 1491880 (Tex. App.—Austin May 29, 2009, no pet. h.). The court of appeals ruled that the two-part test set out in *Industrial Foundation* is the “sole criteria” for determining whether information can be withheld under common-law privacy. *Id.*; see also *Indus. Found.*, 540 S.W.2d at 686. In this instance, the information at issue consists of an undercover officer’s name and identification number. Upon review, we find that the officer’s name and identification number are not intimate or embarrassing. As you have failed to meet the first prong of the *Industrial Foundation* test for privacy, we find that the information at issue is not confidential under common-law privacy and the city may not withhold it under section 552.101.

We note, however, that the 81st Legislature recently enacted section 552.151 of the Government Code which relates to a public employee or officer's safety.¹ This section provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Added by Act of June 3, 2009, 81st. Leg., R.S., S.B. 1068, § 4 (to be codified at Tex. Gov't Code § 552.151). In this instance, you explain the release of the undercover officer's name and identification number would likely cause them to face a threat of imminent physical danger. Based on your representations and our review, we find the city has demonstrated release of the information at issue would subject the officer to a substantial threat of physical harm. Accordingly, the city must withhold the name and identification number of the undercover officer at issue under section 552.151 of the Government Code. The remaining basic information must be released to the requestor.

We also note the citation contains information protected by 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[.]" Gov't Code § 552.130(a)(1). Accordingly, the city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, with the exception of basic information and the marked citation, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information, the city must withhold the marked name and identification number of the undercover officer at issue under section 552.151 of the Government Code.² The city must withhold the Texas motor vehicle record information we have marked in the citation under section 552.130 of the Government Code.

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).

²Section 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. We note that the requestor in this instance is the arrestee; thus he has a right of access to his own social security number under section 552.023 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 asks governmental body to provide him with information concerning himself).

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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 350433

Enc. Submitted documents

c: Requestor
(w/o enclosures)