



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-10494

Dear Mr. Phillips:

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# 350434 (Fort Worth PIR No. 3568-09).

The City of Fort Worth (the "city") received a request for a specified offense report. 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)(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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us, and have provided an affidavit from the Tarrant County District Attorney's Office stating, that the submitted information is related to a pending criminal prosecution. Based on your representation, we conclude section 552.108(a)(1) is generally applicable to the submitted 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).

We note 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 seek to withhold the names and identification numbers of undercover police officers in the submitted information under section 552.101 in conjunction with common-law privacy and “special circumstances.” You contend the release of the officers’ names and identification numbers “would likely cause the officers to face ‘imminent threat of physical danger.’” 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. See *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. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 686 (Tex. 1976). In this instance, the information at issue consists of undercover officers’ names and identification numbers. You have failed to establish how this information constitutes highly intimate or embarrassing information. Therefore, as you have not satisfied the first element of the *Industrial Foundation* test for common-law privacy, we find the officers’ names and identification numbers are not confidential under common-law privacy and may not be withheld on that basis under section 552.101.

We also 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 in part:

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.

¹The Office of the Attorney General will raise a mandatory exception, such as section 552.151 of the Government Code, on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

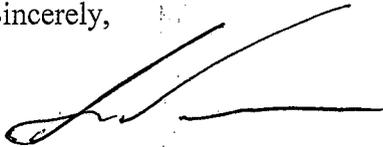
Act of May 31, 2009, 81st. Leg., R.S., S.B. 1068, § 4 (to be codified at Gov't Code § 552.151). You represent to this office that the undercover police officers would likely be endangered by the public disclosure of their names and identification numbers. Based on your representation, we find the city has demonstrated that release of the information at issue would subject the officers to a substantial threat of physical harm. We therefore conclude the city must withhold the officers' names and identification numbers, which you have highlighted in yellow, under section 552.151. Accordingly, the remaining basic information must be released under section 552.108(c); however, the city may withhold the remaining information under section 552.108(a)(1).

In summary, with the exception of basic information, the city may withhold the submitted information under section 552.108 of the Government Code. In releasing basic information, the city must withhold the yellow-highlighted information under section 552.151 of the Government Code.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 350434

Enc. Submitted documents

c: Requestor
(w/o enclosures)