



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 13, 2009

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2009-11331

Dear Mr. Alicie:

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# 352111.

The Baytown Police Department (the "department") received a request for information pertaining to a specified case. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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). The types 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. *Id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under

common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find that most of the information you have marked in yellow is intimate or embarrassing and of no legitimate public interest. Accordingly, the department must generally withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information, which we have marked for release, is not intimate or embarrassing and may not be withheld under section 552.101 in conjunction with common-law privacy. Therefore, except where we have marked for release, the department must withhold the information you have marked under section 552.101 in conjunction with common-law privacy.

Section 552.108(a) 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* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have marked in orange relates to a pending criminal investigation. Based upon your representation, 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, we agree the department may withhold the information you have marked in orange under section 552.108(a)(1) of the Government Code.¹

Section 552.130 of the Government Code 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 [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. Upon review, we find the information you have marked in pink, as well as the additional information we have marked, is generally subject to section 552.130. We note, however, that the requestor may be the insurance provider of the complainant listed in the submitted information. As such, this requestor, if acting as the insured complainant’s authorized representative, has a right of access to the complainant’s Texas motor vehicle record information. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). In this instance, it

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

is not clear that the requesting insurance company is acting as the complainant's authorized representative. Therefore, we rule conditionally. To the extent the requestor has a right of access under section 552.023 to the marked Texas motor vehicle record information belonging to the complainant, the department must release the complainant's Texas motor vehicle record information to this requestor and withhold the remaining information at issue under section 552.130.² To the extent this requestor does not have a right of access under section 552.023, the department must withhold all of the information marked under section 552.130 of the Government Code. In either instance, the department must withhold the Texas motor vehicle record information pertaining to the other individual under section 552.130.

You have marked in green portions of the remaining information you assert are subject to section 552.147 of the Government Code. Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.³ Gov't Code § 552.147. Therefore, the department may withhold the social security numbers you have marked in green under section 552.147 of the Government Code.

In summary, the department must withhold the information you have marked in yellow under section 552.101 of the Government Code in conjunction with common-law privacy, except for that information we have marked for release. The department may withhold the information you have marked in orange under section 552.108(a)(1) of the Government Code. The department must withhold the Texas motor vehicle record information you have marked in pink, as well as the information we have marked, under section 552.130 of the Government Code, except to the extent that the requestor has a right of access to that information under section 552.023 of the Government Code. The department may withhold the social security numbers you have marked in green under section 552.147 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,

²In that case, should the department receive another request for these same records from a person who would not have a right of access to this individual's private information, the department should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302.

³Section 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. *See* Gov't Code § 552.147(b).

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,

A handwritten signature in black ink, appearing to read "Matt Entsminger".

Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 352111

Enc. Submitted documents

c: Requestor
(w/o enclosures)