



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 24, 2009

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2009-11849

Dear Ms. Rangel

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# 353131.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all documents and audio recordings regarding a specified incident. You state the sheriff will release a portion of the requested information. You claim that the submitted information is 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 552.108(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 inform us that the submitted information pertains to a pending criminal investigation. Based upon this representation and our review of the submitted information, we find that release of the submitted 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). Therefore, we conclude that 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. *See* Gov't Code § 552.108(c). Basic information refers

to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 184-85; *see also* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). We note that the submitted information contains a computer-aided dispatch (“CAD”) report. In Open Records Decision No. 649 (1996), this office concluded that information contained in a CAD report is substantially the same as basic information and thus is not excepted from public disclosure under section 552.108. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (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*). Because the information contained in the CAD report is basic information, that information may not be withheld under section 552.108(a)(1). Therefore, with the exception of basic information, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code. In this instance, however, the sheriff seeks to withhold portions of the basic information under section 552.101 of the Government Code in conjunction with common-law privacy, as well as sections 552.130 and 552.147 of the Government Code.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or 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. 540 S.W.2d at 683.

Upon review, we find that portions of the basic information are intimate or embarrassing and of no legitimate public interest. However, we note the requestor is the attorney of the individual to whom the private information pertains. As such, this requestor has a special right of access to her client’s private information under section 552.023 of the Government Code.¹ *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the sheriff may not withhold any of the submitted information under section 552.101 on the basis of common-law privacy.

¹Section 552.023 of the Government Code provides that a governmental body may not deny access to a person or a person’s representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov’t Code § 552.023(b). If the sheriff receives another request for this information from a person who would not have a special right of access to this information, then the sheriff should resubmit this same information and request another decision. *See id.* §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

Next, section 552.130 excepts from disclosure information related 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. *See* Gov't Code § 552.130(a)(1), (2). Therefore, the sheriff must withhold the information we have marked in the CAD report pursuant to section 552.130 of the Government Code.

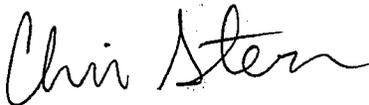
You claim the remaining information contains social security numbers excepted from disclosure under section 552.147 of the Government Code. This section provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). Accordingly, the sheriff may withhold social security numbers from the remaining information under section 552.147 of the Government Code.²

In summary, (1) with the exception of basic information, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code; (2) within the CAD report, the sheriff must withhold the information we have marked under section 552.130 of the Government Code; and (3) the sheriff may withhold social security numbers under section 552.147 of the Government Code. The remaining basic information must be released to the requestor.

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

²We note that section 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.

Ref: ID# 353131

Enc. Submitted documents

c: Requestor
(w/o enclosures)