



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2009

Ms. Laura Garza Jimenez
County Attorney
Nueces County
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2009-13647

Dear Ms. Jimenez:

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# 356964.

The Nueces County Sheriff's Office (the "sheriff") received a request for several categories of information pertaining to a specified incident. You claim that 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 552.108(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.* §§ 552.108(a)(1), . 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide an affidavit reflecting, that the information at issue relates to a pending criminal investigation. Based on your representations, the submitted affidavit, and our review, we determine that the release of the information you have highlighted would interfere with the 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 the sheriff may withhold the highlighted information under section 552.108(a)(1) of the Government Code.¹

The remaining information contains an arrestee's fingerprints. 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 information that other statutes makes confidential, such as section 560.003 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the fingerprint information at issue. Therefore, the sheriff must withhold the fingerprint information you have highlighted under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law 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 type 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 medical information or information indicating disabilities or specific illnesses is 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 agree that a portion of the information you seek to withhold is highly intimate or embarrassing and of no legitimate public interest. Accordingly, we conclude that the sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find that none of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the remaining information may be withheld on the basis of common-law privacy.

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

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

state[.]” Gov’t Code § 552.130. Accordingly, the sheriff must withhold the Texas driver’s license number we have marked under section 552.130 of the Government Code.

You claim that some of the remaining information is excepted under section 552.147 of the Government Code, which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. The sheriff may withhold the social security number we have marked under section 552.147.²

In summary, the sheriff may withhold the information you have highlighted under section 552.108(a)(1) of the Government Code. The sheriff must withhold the fingerprint information you have highlighted under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the Texas driver’s license number we have marked under section 552.130 of the Government Code. The sheriff may withhold the social security number we have marked 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, 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, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

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. Gov’t Code § 552.147(b).

Ref: ID# 356964

Enc. Submitted documents

cc: Requestor
(w/o enclosures)