



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2009

Mr. Jason E. Moody
Public Information Officer
Cameron County District Attorney's Office
974 East Harrison Street
Brownsville, Texas 78520

OR2009-14141

Dear Mr. Moody:

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# 357609.

The Cameron County District Attorney's Office (the "district attorney") received a request for information related to a specified arrest, including a copy of the pre-trial diversion agreement. You state that the district attorney is releasing some of the requested information to the requestor. You claim that portions of the submitted information are 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 representative sample of information.¹

Initially, we address your claim that the Act does not apply to some of the submitted information. This office has concluded that specific records held by a community supervision and corrections department regarding individuals on probation and subject to the direct supervision of a court are not subject to the Act because such records are held on behalf of the judiciary. *See* Open Records Decision No. 646 (1996); *see also* Gov't Code § 552.003(1)(B) (definition of governmental body does not include judiciary). You assert that the pre-trial diversion agreement at issue "is considered to be judiciary." We note that this information is held by the district attorney, not by a community supervision and corrections department. Accordingly, we find that the information pertaining to the pre-trial

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

diversion agreement is subject to the Act and must be released unless it comes within the scope of an exception to disclosure under the Act. Thus, we will address the arguments you have raised under the Act.

We next note that the submitted information contains a CR-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has provided the district attorney with two of the specified items of information. Accordingly, the district attorney must release the submitted CR-3 accident report form in its entirety pursuant to chapter 550 of the Transportation Code.

We also note that Exhibit B contains information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body. These documents are expressly public under section 552.022(a)(3) unless they are confidential under other law. Although you claim that Exhibit B is excepted under section 552.108, this section is a discretionary exceptions to disclosure and therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). As such, section 552.108 is not other law that makes information confidential for the purposes of section 552.022(a)(3). Therefore, the information at issue may not be withheld under section 552.108. However, you also claim that the information at issue is excepted from disclosure under section 552.101 of the Government Code, which is other law for purposes of section 552.022. Accordingly, we will consider the applicability of this exception to the documents at issue.

Section 552.101 of the Government Code excepts from public 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 that (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.

Upon review, we find you have failed to demonstrate how any portion of the information subject to section 552.022 constitutes highly intimate or embarrassing information that is not of legitimate public interest. Therefore, the district attorney must release the information subject to section 552.022, which we have marked, to the requestor.

We now turn to your argument under section 552.108 of the Government Code for the remaining information in Exhibit B. 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.” 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), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that the information at issue includes a statutory warning. Because a copy of the warning has been provided to the arrestee, we find that its release will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the district attorney may not withhold the statutory warning under section 552.108(a)(1). We understand you to claim that the defendant is subject to ongoing prosecution until he completes the pre-trial diversion program successfully. Based upon your representation, we conclude that the release of the remaining information in Exhibit B 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, section 552.108(a)(1) of the Government Code is generally applicable to the remaining information in Exhibit B.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense and booking information. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the statutory warning and basic information, the district attorney may withhold the remaining information in Exhibit B under section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information in Exhibit B that is not otherwise confidential by law. Gov’t Code § 552.007.

Finally, we note that a portion of the submitted information in Exhibit A is subject to section 552.130 of the Government Code.² Section 552.130 provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or

²The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The district attorney must withhold the information that we have marked under section 552.130.

In summary, the district attorney must release the CR-3 accident report form pursuant to section 550.065(c)(4) of the Transportation Code. We have marked the information that must be released pursuant to section 552.022(a)(3) of the Government Code. With the exception of the statutory warning and basic information, which must be released, the district attorney may withhold the remaining information in Exhibit B under section 552.108(a)(1) of the Government Code. The district attorney must withhold the information in Exhibit A that we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.³

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 357609

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We 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.