



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 1, 2009

Mr. Joe Hegar  
Attorney at Law  
For Katy Police Department  
P.O. Box 35  
Katy, Texas 77492-0035

OR2009-16952

Dear Mr. Hegar:

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# 362781.

The Katy Police Department (the "department"), which you represent, received a request for all information used to reach a determination regarding a specified complaint, and the final report of findings regarding the same complaint. You state the department has provided some of the requested information to the requestor. You claim the submitted internal affairs investigation records 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 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 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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987).*

You state the submitted records pertain to an internal affairs investigation conducted by the department concerning alleged misconduct by the officers who arrested the requestor's clients. You further state the internal investigation has concluded and no disciplinary or other punitive action was taken against the officers involved. Section 552.108 is generally

not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You assert the submitted internal affairs investigation records relate to pending criminal prosecutions in the Katy Municipal Court of the underlying offenses for which the requestor's clients were arrested. You have not, however, provided a representation from the prosecuting entity, or otherwise indicated, the prosecuting entity seeks to withhold the information because its release would interfere with the pending prosecution. Thus, we find the department has not demonstrated the applicability of section 552.108(a)(1) to the submitted internal affairs investigation records. Consequently, the submitted information may not be withheld under section 552.108(a)(1) of the Government Code.

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. This section 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). To establish the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. You seek to withhold the witnesses' names, home addresses, and other identifying information in the submitted internal affairs investigation records. Although you generally assert this information is protected by common-law privacy, you have failed to provide any arguments explaining how this information constitutes highly intimate or embarrassing information that is not of legitimate concern to the public. Furthermore, this office has determined that an individual's name, home address, and telephone number are generally not private information. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person's home address and telephone number is not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers ordinarily not private). Thus, you have failed to demonstrate the applicability of common-law privacy to the witnesses' names, home addresses, and other identifying information in the submitted records. Consequently, the department may not withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the submitted information includes Texas driver's license numbers. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.<sup>1</sup> Gov't Code § 552.130(a)(1), (2). We note, however, section 552.130 protects privacy interests. In this instance, the submitted

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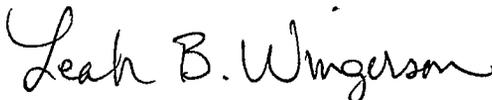
<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information contains the Texas driver's license numbers of the requestor's clients, as well as other individuals. Because the requestor is acting as his clients' authorized representative, he has a right of access to his clients' driver's license numbers under section 552.023 of the Government Code, and the information may not be withheld under section 552.130. *Id.* § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds information is considered confidential under privacy principles). However, as the requestor does not have a right of access to other individuals' driver's license numbers, which we have marked, the department must withhold the marked driver's license numbers in the submitted records under section 552.130 of the Government Code. As no other exceptions to disclosure have been claimed, 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](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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 362781

Enc. Submitted documents

c: Requestor  
(w/o enclosures)