



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 29, 2010

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

OR2010-01400

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# 369683.

The Baytown Police Department (the "department") received a request for BPD case #2009-46560. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim the information you have highlighted in orange is excepted from disclosure under section 552.108 of the Government Code. 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." 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), 552.301(e)(1)(A); see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977).* You state the submitted information relates to a pending criminal investigation. Based on this representation, we conclude the release of the information highlighted in orange 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., 536 S.W.2d 559 (Tex. 1976)* (court delineates law enforcement

interests that are present in active cases). Therefore, the department may withhold the orange-highlighted information under section 552.108(a)(1).<sup>1</sup>

You claim some of the remaining information is excepted under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common law 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. In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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). We have marked the information that the department must withhold under section 552.101 in conjunction with common-law privacy. The remaining information is not highly intimate or embarrassing; therefore, the remaining information is not confidential under common-law privacy, and the department may not withhold it on that ground.

You also claim the social security numbers you have highlighted in green are excepted from disclosure under section 552.147 of the Government Code. This section provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the department may withhold the green-highlighted social security numbers under section 552.147.<sup>2</sup>

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the orange-highlighted information under section 552.108 of the Government Code and the green-highlighted social security numbers under section 552.147 of the Government Code. The remaining information must be released.

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<sup>1</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

<sup>2</sup>We note 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.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/rl

Ref: ID# 369683

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)