



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2010

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2010-03880

Dear Mr. Mann:

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# 372883 (GCA09-0985).

The Garland Police Department (the "department") received a request for three incident reports and related videos. You state you have released some information to the requestor. You claim 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 information, a portion of which is a representative sample.¹

Initially, we note that the department has redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code

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.

§§ 552.301(a), .301(e)(1)(D). We note the department has redacted a social security number. 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. *See id.* § 552.147. In addition, we note the department has redacted a Texas license plate number and Texas driver's license numbers. Redaction of this type of information is now permitted pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009), which authorizes the withholding of ten categories of information, including Texas license plate and driver's license numbers under section 552.130 of the Government Code. We note, however, that section 552.130 protects personal privacy, and the request indicates the requestor may represent one of the individuals whose driver's license number is at issue. Thus, if the requestor is the authorized representative of this individual, the requestor would have a right of access to his Texas driver's license number under section 552.023 of the Government Code. *See Gov't Code* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to that person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Information to which the requestor has a right of access under section 552.023 may not be withheld from him under section 552.130. We also note Open Records Decision No. 684 does not authorize the withholding of Texas vehicle identification numbers or license plate years. You do not assert, nor does our review of our records indicate, that the department has been otherwise authorized to withhold the vehicle identification number and license plate year the department redacted without seeking a ruling from this office. *See Gov't Code* § 552.301(a); ORD 673. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. However, in the future, the department must not redact requested information that it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code. *See Gov't Code* §§ 552.301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.*

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 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. This office has found that some kinds of medical information or information indicating

disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we agree portions of the submitted information are intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold this information, which you have marked in blue, under section 552.101 of the Government Code in conjunction with common-law privacy.

You assert portions of the remaining information are excepted pursuant to section 552.108 of the Government Code. Section 552.108 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *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 department may withhold the submitted DVD and the portions of the remaining information you have marked in red under section 552.108(a)(1) of the Government Code. *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).

Section 552.130 of the Government Code provides that information relating to a motor vehicle title or registration issued by a Texas agency is excepted from public release.² Gov’t Code § 552.130(a)(2). The department must withhold the vehicle identification number and license plate year you have redacted under section 552.130.

In summary, the department must withhold the information you have marked in blue under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the submitted DVD and the information you have marked in red under section 552.108 of the Government Code.³ The department must withhold the information you have redacted under section 552.130 of the Government Code, unless the requestor has a right of access to one of the driver’s license numbers. The remaining information must be released.

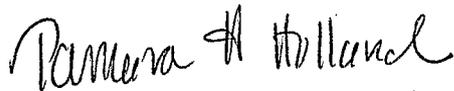
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³As our ruling is dispositive, we need not address your remaining argument for this information..

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.og.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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/jb

Ref: ID# 372883

Enc. Submitted documents

c: Requestor
(w/o enclosures)