



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2010

Ms. Paula M. Rosales
Assistant Criminal District Attorney
Dallas County
Frank Crowley Courts Building
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2010-10841

Dear Ms. Rosales:

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# 387333.

The Dallas County District Attorney's Office (the "district attorney") received a request for investigation notes, interview notes, and other documents relating to statements made by three named individuals.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.1325, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert Exhibit F should be withheld in its entirety under section 552.108(a)(4) of the Government Code. Section 552.108 provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

¹The district attorney sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request).

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). 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 that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(4) is applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state. In this instance, you inform this office that the information in Exhibit F was prepared by the district attorney in the course of preparing for a criminal prosecution. Based on your representations and our review, we conclude the district attorney may withhold Exhibit F under section 552.108(a)(4).²

Next, the district attorney claims that victim and witness identifiers in the remaining submitted information are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. Section 552.101 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 section 508.313 of the Government Code, which is applicable to records of the Texas Department of Criminal Justice ("TDCJ"). Section 508.313 provides in part:

(a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division [of TDCJ] subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

...

²As our ruling is dispositive, we need not address your remaining arguments for this information.

(c) [TDCJ] may provide information that is confidential and privileged under Subsection (a) to:

...

(4) an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose.

(d) In this section, "eligible entity" means:

(1) a government agency, including the office of a prosecuting attorney[.]

Gov't Code § 508.313(a)-(d). Thus, TDCJ may provide information that is encompassed by section 508.313 to an eligible entity, and such information remains confidential in the possession of the entity to which it was provided. *See id.* § 508.313(c)-(d); *see also* Open Records Decision No. 655 at 8 (1997) (information excepted from public disclosure under Act may be transferred between governmental agencies without destroying its confidential character if agency to which information is transferred has authority to obtain it). The district attorney generally raises section 508.313. Upon review, however, we conclude that the district attorney has not demonstrated that TDCJ provided any of the remaining information to the district attorney under section 580.313(d)(1). Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with section 580.313(a).

The district attorney also seeks to withhold witnesses' identifying information under section 552.101 of the Government Code in conjunction with common-law and constitutional privacy. Common-law privacy 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or 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.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most

intimate aspects of human affairs.” *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)).

Upon review, we find the district attorney has failed to demonstrate how any portion of the submitted information falls within the zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Thus, no portion of the submitted information may be withheld under section 552.101 on that basis. Further, we find no portion of the submitted information to be highly intimate or embarrassing and not of legitimate public interest. Therefore, we conclude no portion of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

The district attorney also claims that victim and witness identifiers are excepted from disclosure under section 552.1325 of the Government Code, which provides:

(a) In this section:

(1) “Crime victim” means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) “Victim impact statement” means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

Gov’t Code § 552.1325. The definition of a victim under article 56.32 of the Code of Criminal Procedure includes an individual who suffers physical or mental harm as a result of criminally injurious conduct. Crim. Proc. Code § 56.32(a)(10), (11). Upon review, we find the submitted information does not include a victim impact statement for purposes of section 552.1325. Accordingly, none of the remaining information may be withheld under section 552.1325.

We note some of the remaining information is subject to section 552.136 of the Government Code, which states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained

by or for a governmental body is confidential.”³ Gov’t Code § 552.136(b). Accordingly, the district attorney must the bank account number we have marked under section 552.136 of the Government Code.

The district attorney also raises section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). We note section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or the general e-mail address of a business. The e-mail address we marked does not appear to be of a type specifically excluded by section 552.137(c). Accordingly, the district attorney must withhold the marked e-mail address under section 552.137, unless the owner has affirmatively consented to release.⁴ *See id.* § 552.137(b).

Finally, the district attorney raises section 552.147 of the Government Code. 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). Accordingly, the district attorney may withhold the social security number in the remaining information under section 552.147.

In summary, the district attorney may withhold Exhibit F under section 552.108 of the Government Code. The district attorney must withhold the bank account number we have marked under section 552.136 of the Government Code and the e-mail address we have marked under section 552.137 of the Government Code, unless unless the owner has affirmatively consented to release. The district attorney may withhold the social security number under section 552.147 of the Government Code. The remaining submitted 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

³The 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).

⁴We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account numbers under section 552.136 of the Government Code and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in black ink that reads "Tamara H. Holland". The signature is written in a cursive, flowing style.

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/jb

Ref: ID# 387333

Enc. Submitted documents

c: Requestor
(w/o enclosures)