



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 22, 2011

Mr. Robert Ray  
Assistant City Attorney  
City of Longview  
P.O. Box 1952  
Longview, Texas 75606

OR2011-02648

Dear Mr. Ray:

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# 409697.

The Longview Police Department (the "department") received a request for the offense report, injury report, any supporting evidence of physical injury, and report of vehicle damage for a specified incident. You claim the marked portions of the submitted records are excepted from disclosure under sections 552.101, 552.103, 552.108, 552.1175, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted the requested report of vehicle damage. To the extent information responsive to that part of the request existed on the date the department received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

You claim all of the information you marked in the submitted offense report may be withheld under 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). 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the offense report relates to an active criminal investigation and prosecution. Based on your representation and our review, we conclude

the release of the information you marked 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) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex 1976). Thus, the department may withhold the information you marked in the offense report under section 552.108(a)(1) of the Government Code.<sup>1</sup>

We note the remaining information includes information that is excepted from disclosure under section 552.102(a) of the Government Code.<sup>2</sup> Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010) (Dec. 20, 2010, motions for reconsideration and rehearing pending). Having carefully reviewed the remaining information, we have marked the information that must be withheld under section 552.102(a) 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. Section 552.101 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 demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. You claim the remaining records contain medical information that is protected by common-law privacy. This office has found 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 Nos. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Although common-law privacy protects some medical information, it does not protect all medically related information. See Open Records Decision No. 478 (1987). Individual determinations are required. See Open Records Decision No. 370 (1983). In this instance, the medical information you seek to withhold concerns an injury which a police officer employed by the department sustained during the performance of his duties. Thus, we find there is a legitimate public interest in the medical information contained in the remaining records. See Open Records Decision No. 423 at 3 (1984) (scope of public employee privacy is narrow). You also claim the remaining records contain personal financial information that is protected

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<sup>1</sup>As we are able to make this determination, we need not address your claims under sections 552.103, 552.130, and 552.147 for the submitted offense report.

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception like section 552.102 on behalf of a governmental body, but ordinarily will not raise other exceptions.

by common-law privacy. Common-law privacy protects certain types of personal financial information. Financial information related only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). The remaining records relate to a workers' compensation claim the police officer filed based on his injury and the approval or denial of that claim by the City of Longview's workers' compensation insurance provider. Because the information you seek to withhold pertains to a financial transaction between a department employee and a governmental body, we find there is a legitimate public interest in it. Therefore, none of the remaining information may be withheld pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

You raise section 552.117(a)(2) of the Government Code for portions of the remaining information.<sup>3</sup> This section excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). You have marked in the remaining information the home address, telephone number, and social security number of a peace officer that works for the department. Thus, this information must be withheld under section 552.117(a)(2) of the Government Code.<sup>4</sup>

The remaining information includes an insurance policy number you marked pursuant to section 552.136 of the Government Code. Section 552.136 provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

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<sup>3</sup>Although you raise section 552.1175 for portions of the remaining information, we note the correct exception to raise for information pertaining to an officer employed by the department is section 552.117.

<sup>4</sup>As our ruling for this information is dispositive, we need not address your argument under section 552.147.

(b) Notwithstanding 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.

*Id.* § 552.136(a), (b). We conclude the insurance policy number you marked is an access device number for purposes of section 552.136. Thus, the department must withhold the marked insurance policy number under section 552.136 of the Government Code.

In summary, the department may withhold the information you marked in the submitted offense report under section 552.108(a)(1) of the Government Code. The department must withhold the information we marked under section 552.102(a) of the Government Code, the home address, telephone number, and social security number you marked under section 552.117(a)(2) of the Government Code, and the marked insurance policy number under section 552.136 of the Government Code. 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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/eeg

Ref: ID# 409697

Enc. Submitted documents

c: Requestor  
(w/o enclosures)