



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2014

Mr. Jeffrey L. Moore
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2014-00256

Dear Mr. Moore:

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# 510638.

The Colony Police Department (the "department"), which you represent, received a request for specified information pertaining to the requestor's client. The department claims some of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

We understand the requestor to argue he has a right of access to the requested information pursuant to section 161.203 of the Health and Safety Code. Section 161.202 of the Health and Safety Code governs requests for medical records by a person's authorized representative "for use in supporting an application for disability benefits or other benefits or assistance the patient or former patient may be eligible to receive based on that patient's or former patient's disability[.]" Health & Safety Code § 161.202(a). Section 161.203 provides a "health care provider or health care facility" that receives a request under section 161.202 "shall provide to the requestor a medical or mental health record requested under section 161.202 not later than the 30th day after the date on which the provider or facility receives the request." *Id.* § 161.203. Section 161.201 defines "health care provider" as "a person who is licensed, certified, or otherwise authorized by the laws of this state to provide or render health care in the ordinary course of business or practice of a profession." *Id.* § 161.201. The requested information is maintained by the department. The requestor has not demonstrated

the department is a health care provider or health care facility for the purposes of section 161.203. Thus, we conclude chapter 161 of the Health and Safety Code does not apply to the information at issue and the requestor does not have a right of access to it on that basis.

Section 552.101 of the Government Code excepts "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 that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. However, we note the information you seek to withhold under common-law privacy pertains to the requestor's client. Because the requestor is the individual's representative, he has a right of access under section 552.023 of the Government Code to information that is excepted from public disclosure under laws intended to protect his client's privacy interests. *See* Gov't Code § 552.023(a) ("a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the department may not withhold any portion of the submitted information from this requestor under section 552.101 of the Government Code on the basis of common-law privacy.

The department asserts some of the submitted information is excepted from release under section 552.108(a) of the Government Code, which excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) 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 information you have marked under section 552.108(a)(1) relates to a pending criminal investigation. Based on this representation, we conclude the release of this information 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 that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

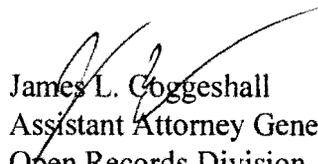
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front-page offense and arrest information, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

To conclude, with the exception of basic information, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must release the remaining information.¹

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 510638

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because the requestor has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

