



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2014

Ms. June B. Harden
Assistant Attorney General
Assistant Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2014-05198

Dear Ms. Harden:

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# 518140 (OAG PIR No. 14-37957).

The Office of the Attorney General (the "OAG") received a request for a specified crime victim compensation file. The OAG states it has redacted information pursuant to Open Records Letter No. 2011-18124 (2011), and that social security numbers of living individuals will be withheld under section 552.147(b) of the Government Code.¹ The OAG claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.132 of the Government Code. We have considered the OAG's claimed exceptions and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure information 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). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. This office has concluded, however, that where an incident involving alleged criminal conduct is still under

¹In Open Records Letter No. 2011-18124 this office issued the OAG a previous determination authorizing it to withhold an employee's user ID under section 552.139 of the Government Code without the necessity of requesting a decision from this office. 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 Gov't Code § 552.147(b).

active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983). Where a non-law enforcement agency is in the custody of information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement entity that it wishes to withhold the information.

The OAG seeks to withhold the incident report in Exhibit B created by the Harris County Sheriff's Office (the "sheriff's office"). The sheriff's office asks the OAG to withhold the information at issue, which is maintained by the OAG's Crime Victims' Compensation Division, from disclosure so as not to interfere with a pending criminal investigation. Based on these representations, we agree release of the information at issue will 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). Accordingly, the OAG may withhold the incident report in Exhibit B pursuant to section 552.108(a)(1) of the Government Code.

Next, we address the OAG's argument under section 552.132 of the Government Code for the information it has marked in Exhibit B. Section 552.132 provides in pertinent part as follows:

(a) . . . , in this section, "crime victim or claimant" means a victim or claimant under Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

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

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

Gov't Code § 552.132. We agree the OAG must withhold the claimants' identifying information you have marked in Exhibit B pursuant to section 552.132.

You also seek to withhold certain information in Exhibit B under section 552.101 of the Government Code in conjunction with federal law. Section 552.101 of the Government Code 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 information protected by other statutes. Pursuant to section 603.4 of title 20

of the Code of Federal Regulations, state unemployment compensation agencies, such as the Texas Workforce Commission (the "commission"), must protect the confidentiality of unemployment claim information which "reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or which could foreseeably be combined with other publicly available information to reveal any such particulars, and must include provision for barring the disclosure of any such information[.]" 20 C.F.R. § 603.4(b). "Claim information" means information about whether an individual is receiving, has received, or has applied for unemployment compensation, as well as "[a]ny other information contained in the records of the State [unemployment compensation] agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits." 20 C.F.R. § 603.2(a)(1)(i), (2)(ii). Information in the commission's files may be disclosed to a requesting agency or other specified parties under certain circumstances. *See* 20 C.F.R. §§ 603.5, .6, .21. Section 603.5(e) provides "[d]isclosure of confidential [unemployment compensation] information to a public official for use in the performance of his or her official duties is permissible." *Id.* § 603.5(e). "Performance of official duties" means "administration or enforcement of law or the execution of the official responsibilities of a Federal, State, or local elected official." *Id.* Section 603.9 further states that for disclosures under section 603.5(e), the commission "must require the recipient to safeguard the information disclosed against unauthorized access or redisclosure . . . and must subject the recipient to penalties . . . for unauthorized disclosure[.]" and sets out the required safeguards. *Id.* § 603.9.

You state the information you have marked in Exhibit B consists of confidential unemployment claim information, which you inform us was provided to the OAG by the commission. You state the commission maintains this information as part of its administration of the state unemployment compensation program, and that the commission has determined that releasing this information to the OAG is necessary for the administration or enforcement of laws under the OAG's purview. *See id.* § 603.5(e). You further state the OAG has executed a confidentiality agreement with the commission with respect to this information. *See id.* § 603.9. We therefore conclude that the OAG must withhold the information you have marked in Exhibit B pursuant to section 552.101 of the Government Code in conjunction with these federal provisions.

Finally, you inform us Exhibit B contains a crime victim's tax returns, which you argue are confidential under federal law. Section 552.101 of the Government Code also encompasses section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition,

or offense[.]” 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *dismissed in part, aff’d in part, vacated in part, and remanded*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, upon review we agree the OAG must withhold the tax forms you have marked in Exhibit B pursuant to section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code.

To summarize, the OAG may withhold the incident report in Exhibit B pursuant to section 552.108(a)(1) of the Government Code; must withhold the claimants’ identifying information you have marked in Exhibit B pursuant to section 552.132 of the Government Code; and must withhold the unemployment claim information and tax information you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with federal law. The remaining information in Exhibit B must be released to the requestor.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/tch

Ref: ID# 518140

Enc. Submitted documents

c: Requestor
(w/o enclosures)