



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2014

Ms. Cynthia Trevino
Denton, Navarro, Rocha & Bernal, P.C.
2500 West William Cannon, Suite 609
Austin, Texas 78745

OR2014-20052

Dear Ms. Trevino:

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# 542284.

The City of Copperas Cove (the "city"), which you represent, received a request for information pertaining to two specified cases. You state the city will withhold motor vehicle record information under section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the requested information is 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.

Section 552.108(a)(1) 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 claiming section 552.108(a)(1) 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).

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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. *Id.* § 552.147(b).

You state case number 12-3446 pertains to an open and active criminal prosecution. You further state, and provide documentation showing, the defendant is subject to ongoing prosecution until the terms of the pretrial diversion are successfully completed. Based on your representations, we conclude the release of case number 12-3446 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). Thus, section 552.108(a)(1) is applicable to case number 12-3446.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” *Id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

You state case number 11-3829 pertains to a criminal investigation that concluded in a result other than conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to case number 11-3829.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the identity of the complainant and the location of the incident. *See* ORD 127 at 4. However, basic information does not include the identities of victims or witnesses who are not the complainant. *See id.* Thus, with the exception of the basic information, the city may withhold case number 12-3446 under section 552.108(a)(1) of the Government Code and case number 11-3829 under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code also encompasses 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 demonstrated. *See id.* at 681-82.

Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation, Id.* at 683. Upon review, we find the city has failed to demonstrate any of the basic information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city may not withhold any of the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the basic information, the city may withhold case number 12-3446 under section 552.108(a)(1) of the Government Code and case number 11-3829 under section 552.108(a)(2) of the Government Code. Basic information must be released.²

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 542284

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we do not address your claim under the informer's privilege.