



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 15, 2005

Mr. Loren B. Smith  
Olson & Olson, L.L.P.  
Wortham Tower, Suite 600  
2727 Allen Parkway  
Houston, Texas 77019

OR2005-08417

Dear Mr. Smith:

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# 232443.

The City of Friendswood (the "city"), which you represent, received a request for copies of police reports at a specified address during a certain period of time, emphasizing one report in particular at that address on a specified date. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. To the extent any additional responsive information existed on the date the city received this request for information, we assume it has been released. If the city has not released any such records, it 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).* We have considered the exceptions you claim and reviewed the submitted information.

We first address your claim under section 552.108. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 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. You state that the submitted information pertains to an investigation that did not result in conviction or deferred adjudication. Based on your representations and our review, we agree that section 552.108(a)(2) is applicable to the submitted information. 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 Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) and includes a detailed description of the offense.

Next, we address your claim under section 552.101 of the Government Code. This section 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 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and 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. 540 S.W.2d at 683. The records at issue contain information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. We have marked the type of information that must be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold the type of information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. Other than basic information, the city may withhold the remaining submitted information under section 552.108(a)(2) of the Government Code. Although section 552.108(a)(2) authorizes the withholding of this information, the city may choose to release all or part of this information that is not otherwise confidential by law. *See Gov't Code § 552.007.*

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel  
Assistant Attorney General  
Open Records Division

RBR/krl

Ref: ID# 232443

Enc. Submitted documents

c: Ms. Elizabeth A. Rasimas  
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(w/o enclosures)