



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 9, 2009

Mr. J. David Dodd, III  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR2009-01689

Dear Mr. Dodd:

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# 334312.

The Allen Police Department (the "department"), which you represent, received a request for specific incident reports pertaining to four specified dates. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *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. *Id.* at 683.

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the submitted information reveals that the requestor knows the identity of the individual involved as well as the nature of the information in incident report numbers 07003317, 07074033, and 08064000. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, we find that report numbers 07003317, 07074033, and 08064000 are generally confidential under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, that the requestor may be an authorized representative of the individual whose right to privacy is at issue. Thus, the requestor may have a right of access to this information as the individual's authorized representative. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). Accordingly, we must rule conditionally. If the requestor is not the individual's authorized representative, then the department must withhold report numbers 07003317, 07074033, and 08064000 in their entirety under section 552.101 in conjunction with common-law privacy. In the event that the requestor is the subject individual's authorized representative, then pursuant to section 552.023 of the Government Code, the department may not withhold report numbers 07003317, 07074033, and 08064000 on privacy grounds under section 552.101. *See* Gov't Code § 552.023(a).

You also raise section 552.101 in conjunction with common-law privacy for report numbers 08014186 and 08046716. However, you have not demonstrated that any portion of these reports consist of information that is highly intimate or embarrassing information of no legitimate concern to the public. Accordingly, the department may not withhold incident report numbers 08014186 and 08046716 under section 552.101 in conjunction with common-law privacy.

To the extent the department may not withhold report numbers 07003317, 07074033, and 08064000 on privacy grounds under section 552.101, we will address your argument under section 552.108 of the Government Code for this information as well as the remaining submitted information. Section 552.108(a)(1) of the Government Code exempts 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 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.*, 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state

that the information at issue pertains to pending criminal investigations and prosecutions. Based on this representation, we conclude that the release of this information would generally 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), *writ ref'd. n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). However, we note that the submitted information includes a criminal trespass warning. Because a copy of the criminal trespass warning has been provided to the individual subject to the warning, we find that release of the criminal trespass warning will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the department may not withhold the criminal trespass warning, which we have marked, under section 552.108(a)(1) of the Government Code.

We also note section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, if the department determines that the requestor is not the authorized representative of the named individual, then the department must withhold report numbers 07003317, 07074033, and 08064000 in their entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. If the department determines that the requestor is the authorized representative of the named individual, then with the exception of basic information which must be released, the department may withhold report numbers 07003317, 07074033, and 08064000 under section 552.108(a)(1).<sup>1</sup> With the exception of basic information, and the criminal trespass warning we have marked for release, the department may also withhold the remaining submitted reports under section 552.108(a)(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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php),

---

<sup>1</sup>If the department determines that the requestor is the authorized representative of the named individual and the department receives another request for this same information from a different requestor, then the department should again seek a decision from this office.

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 at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin Gordon". The signature is written in a cursive style with a large, looping initial "J".

Justin Gordon  
Assistant Attorney General  
Open Records Division

JDG1/cc

Ref: ID# 334312

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)