



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2009

Ms. Stephanie Galanides
City Secretary
City of Heath
200 Laurence Drive
Heath, Texas 75032

OR2009-05705

Dear Ms. Galanides:

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# 346218.

The City of Heath (the "city") received a request for all records pertaining to two specified incidents. You state you have already released the basic information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note, that report no. 09-CS0087 is excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.¹ Section 552.101 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*

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 request reveals that the requestor knows the identity of the individual involved as well as the nature of the information in the submitted report. 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, the city must withhold report no. 09-CS0087 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* 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. *Id.* You state that report no. 07-CS0399 pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

We note, and you acknowledge, that section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). We note that you have marked the entire narrative portion of the submitted report as information you seek to withhold under section 552.108. However, the remaining portion of the report does not contain information sufficient to satisfy the requirement that a "detailed description of the offense" be released. Therefore, we determine that the city must release a sufficient portion of the narrative section of report no. 07-CS0399 to encompass a detailed description of the offense. Accordingly, with the exception of basic information which includes a detailed description of the offense, the city may withhold report no. 07-CS0399 under section 552.108(a)(2) of the Government Code.

In summary, the city must withhold report no. 09-CS0087 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The city may, with the exception of basic information which includes a detailed description of the offense, withhold report no. 07-CS0399 under section 552.108(a)(2) of the Government Code.

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, 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,



Travis Tidmore
Assistant Attorney General
Open Records Division

TT/sdk

Ref: ID# 346218

Enc. Submitted documents

c: Requestor
(w/o enclosures)