



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 11, 2009

Mr. B. Chase Griffith  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road Suite 800  
Richardson, Texas 75081

OR2009-06316

Dear Mr. Griffith:

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# 342563 (ORR No. 09-1571).

The City of McKinney (the "city"), which you represent, received a request for police call sheets and incident and offense reports involving two named individuals and a specified address and time interval. You claim that 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 information you submitted.

We first note that the city appears to have created the submitted list of incident reports after receiving the instant request for information. The Act does not require a governmental body to release information that did not exist when it received a request or create responsive information.<sup>1</sup> Thus, the submitted list of incident reports is not responsive to this request. Accordingly, this decision does not address the public availability of that information, and it need not be released in response to this request.

Next, we address your exceptions to disclosure of the remaining information. We begin with section 552.108 of the Government Code, which is the more inclusive exception you claim. Section 552.108(a)(2) excepts "[i]nformation held by a law enforcement agency or

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<sup>1</sup>See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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[.]” Gov’t Code § 552.108(a)(2). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information is related to concluded cases and incidents that did not result in a conviction or a deferred adjudication. Based on your representation, we conclude that section 552.108(a)(2) is generally applicable in this instance.

We note, however, that 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). 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. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In this instance, most of the responsive information consists of Incident Dispatch Detail Reports. In Open Records Decision No. 649 (1996), this office concluded that information contained in a computer-assisted dispatch (“CAD”) report is substantially the same as basic information and thus is not excepted from public disclosure under section 552.108. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (no qualitative difference between information contained in police dispatch records or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*). Therefore, because the information in the Incident Dispatch Detail Reports is basic information, that information may not be withheld under section 552.108(a)(2) and must generally be released. The city also must release basic information with respect to the incident report for case number 1-08-041196, including a detailed description of the offense, even if that information does not literally appear on the front page of the report. *See* ORD 127 at 3-4. The city may withhold the remaining information in that incident report under section 552.108(a)(2).

You also raise section 552.101 of the Government Code in conjunction with common-law privacy. 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. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

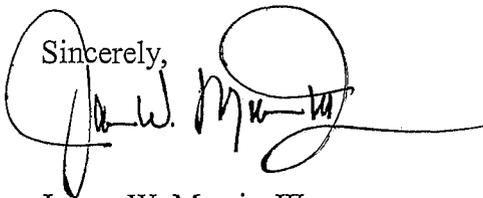
You contend that all of the remaining responsive information is private. We find, however, that only a small amount of the remaining information is intimate or embarrassing and not a matter of legitimate public interest. The city must withhold that information, which we have marked, under section 552.101 in conjunction with common-law privacy. The city may not withhold any of the remaining information on privacy grounds under section 552.101.

In summary: (1) the city may withhold the incident report for case number 1-08-041196 under section 552.108(a)(2) of the Government Code, except for the basic information that must be released under section 552.108(c); and (2) the city must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The rest of the responsive information must be released.

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), 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 "J.W. Morris, III", written over a circular stamp or mark.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 342563

Enc: Submitted documents

c: Requestor  
(w/o enclosures)