



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2009

Mr. Miguel Angel Matos
Denton, Navarro, Rocha, & Bernal
2517 North Main Avenue
San Antonio, Texas 78212

OR2009-06977

Dear Mr. Matos:

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# 346623.

The City of Copperas Cove (the "city"), which you represent, received a request for all information pertaining to a specified case, including photographs. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains a court-filed document. Information filed with a court is generally a matter of public record under section 552.022(a)(17) of the Government Code and may only be withheld if expressly confidential under other law. *See* Gov't Code § 552.022(a)(17) (information contained in public court record is not excepted from required disclosure under Act unless expressly confidential under other law). Although you assert this information is excepted under section 552.108 of the Government Code, that section is a discretionary exception within the Act and not "other law" that makes information confidential. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, the court-filed document we have marked may not be withheld under section 552.108. You also raise section 552.101 of the Government Code in conjunction with common-law privacy for

this information.¹ We note, however, that information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, the city may not withhold the court-filed document, which we have marked, based on section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure of this information, the information subject to section 552.022(a)(17) must be released to the requestor.

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 the submitted information 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 the remaining submitted information.

However, 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 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). Thus, with the exception of basic information, the city may withhold the remaining submitted information under section 552.108(a)(2) of the Government Code.²

Section 552.101 encompasses the doctrine of common-law privacy, which 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 types 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. Upon review, we find that no portion of the basic information is highly intimate or embarrassing information of no legitimate concern to the public. We also note that section 552.101 does not encompass the doctrine of false-light privacy, which is concerned with whether information would place a person in a false light in the public eye.

¹Section 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 section encompasses the doctrine of common-law privacy.

²As our ruling is dispositive, we need not address your argument under section 552.130 of the Government Code.

See Open Records Decision No. 579 at 7-8 (1990) (attorney general could not conclude that legislature intended for statutory predecessor to section 552.101 to encompass doctrine of false-light privacy). Therefore, the city may not withhold any of the basic information under section 552.101 of the Government Code.

You seek to withhold the social security number of the arrestee from the basic information. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.³ Gov’t Code § 552.147. Therefore, the city may withhold the social security number of the arrestee you have marked pursuant to section 552.147.

In summary, the city must release the court-filed document that we have marked pursuant to section 552.022(a)(17) of the Government Code. The city may, with the exception of basic information, withhold the remaining information pursuant to section 552.108(a)(2) of the Government Code. The city may withhold the marked social security number of the arrestee pursuant to section 552.147 of the Government Code. The remaining basic 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, 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

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³We note that 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.

Ref: ID# 346623

Enc: Submitted documents

c: Requestor
(w/o enclosures)