



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2009

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

OR2009-10180

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# 349810 (City of McKinney ORR-09-1768).

The City of McKinney (the "city"), which you represent, received two requests from the same requestor for a specified incident report. You claim that the submitted 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 submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or 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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a police investigation into possible criminal activity that did not result in conviction or deferred adjudication. Based on this representation, we agree that section 552.108(a)(2) of the Government Code is generally applicable to this 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). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle Publishing Company 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). See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

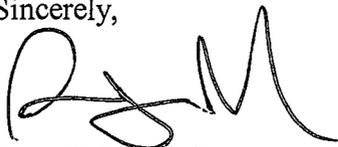
We note that basic information includes a detailed description of the offense. See 531 S.W.2d at 186-87; ORD 127. In this instance, a portion of the narrative contained in the arrest report is protected by common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate or 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. We have marked portions of the submitted information that are highly intimate or embarrassing and not of legitimate public interest. However, we note that this information relates to the requestor's husband. Under section 552.023 of the Government Code, a person's authorized representative has a special right of access to private information that would otherwise be excepted from public disclosure. See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Thus, if the requestor establishes that she is acting as an authorized representative for the person whose privacy interests are at stake, then the city must release the information we have marked under section 552.101 in conjunction with common-law privacy as part of basic information. Conversely, if the requestor does not establish that she is acting as an authorized representative for the person whose privacy interests are at stake, then, when releasing basic information, the city must not release the information we have marked under section 552.101 in conjunction with common-law privacy.¹

¹We 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. Gov't Code § 552.147(b). In this instance, the suspect's social security number is basic information subject to section 552.108(c). However, as stated above, if the requestor is acting as the involved person's authorized representative, then she has a right of access to information that would otherwise be excepted from public disclosure on privacy grounds. See *id.* § 552.023.

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,

A handwritten signature in black ink, appearing to read 'R. Mitchell', with a stylized flourish at the end.

Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 349810

Enc. Submitted documents

cc: Requestor
(w/o enclosures)