



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2009

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

OR2009-16486

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# 361891.

The McKinney Police Department (the "department"), which you represent, received a request for information pertaining to a named individual. 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)(1) excepts 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 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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that incident report number 09-011431 relates to a pending criminal investigation. Based on this representation, we conclude that the release of this report would 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state report numbers 09-023814 and 09-022612 relate to criminal investigations that have been closed and no further action will be taken. You further state the investigations ended in results other than conviction or deferred adjudication. Based on these representations, we agree section 552.108(a)(2) is applicable to report numbers 09-023814 and 09-022612.

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*. *See* 531 S.W.2d at 177. Basic information includes the offense charged and a detailed description of the offense. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

You claim the basic information in report number 09-023814 contains information protected by common-law privacy. Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). 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. Upon review, we find that portions of report number 09-023814 are highly intimate or embarrassing and of no legitimate public interest. In this instance, however, we note that the requestor, as the authorized representative of the individual whose information is at issue, has a special right of access to information pertaining to the named individual under section 552.023 of the Government Code. Section 552.023 gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. Therefore, we conclude that the department may not withhold any of the submitted information from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, except for basic information, the department may withhold report number 09-011431 under section 552.108(a)(1) of the Government Code and report numbers 09-023814 and 09-022612 under section 552.108(a)(2) of the Government Code.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, 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, toll free, at (888) 672-6787.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID# 361891

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note that some of the information being released is confidential and not subject to release to the general public. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the department receives another request for this information from an individual other than this requestor, the department should again seek our decision.