



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2010

Ms. Diana Davis
Records Clerk
The City of Harker Heights
402 Indian Trail
Harker Heights, Texas 76548

OR2010-00343

Dear Ms. Davis:

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# 366536.

The City of Harker Heights (the "city") received a request for all police reports originating from a specific address. You state you have released some of the requested information. 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.

You claim that report number 09-03140 is made confidential by the common-law right of 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. Section 552.101 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. *See 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 established. *See id.* at 681-82. The type 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. 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 report reveals 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. Thus, report number 09-03140 is generally confidential under common-law privacy.

We note, however, that the requestor is the spouse of the person whose privacy rights are implicated and may be acting as a representative of that individual. Section 552.023(a) of the Government Code states that a person or a person's authorized representative has 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 is protected from public disclosure by laws intended to protect that person's privacy interests. Gov't Code § 552.023. Therefore, if the requestor is the authorized representative of the individual at issue, the city may not withhold report number 09-03140 under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not the authorized representative of the individual at issue, the city must withhold report number 09-03140 under section 552.101 of the Government Code in conjunction with common-law privacy.

You raise section 552.108(a)(2) of the Government Code, which excepts from public 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). You also raise section 552.108(b)(2), which excepts "[a]n internal record or notation of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication [.]" *Id.* § 552.108(b)(2). 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 at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You inform us the submitted information is related to a police investigation "that *has not* resulted in a conviction or deferred adjudication" (emphasis added). We note that section 552.108(a)(2) and section 552.108(b)(2) are applicable only if the information at issue is related to a *concluded* criminal case "that did not result in conviction or deferred adjudication." Gov't Code § 552.108(a)(2), (b)(2) (emphasis added). Thus, having considered your representations, we find that you have not demonstrated that the submitted information falls within the scope of section 552.108(a)(2) or section 552.108(b)(2). *See id.*

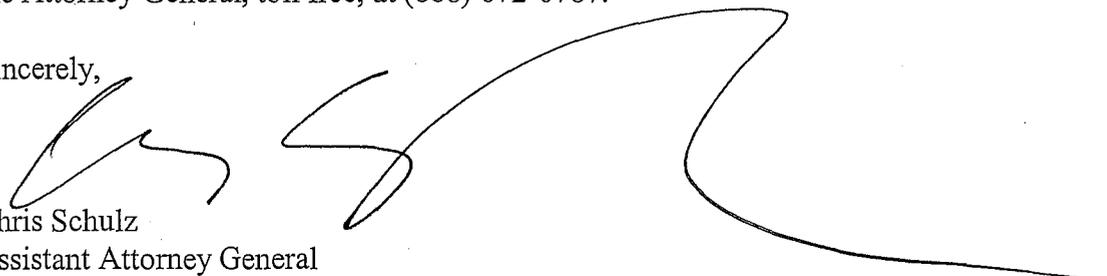
§ 552.301(e)(1)(A). We therefore conclude that the department may not withhold any of the submitted information under section 552.108 of the Government Code.

In summary, if the requestor is the authorized representative of the individual at issue, the city may not withhold report number 09-03140 under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not the authorized representative of the individual at issue, the city must withhold report number 09-03140 under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions against disclosure, the remaining information must be released in its entirety.

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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 366536

Enc. Submitted documents

cc: Requestor
(w/o enclosures)