



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 20, 2010

Mr. C. Corey Fickes
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
600 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2010-00864

Dear Mr. Fickes:

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# 367484.

The Southlake Police Department (the "department") received a request for 911 calls to a specified address during a specified time period, including the "call for service slip" and/or offense reports that resulted from these calls. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 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 that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state incident report numbers 2004-00015226, 2004-00017471, 2004-00018688, 2006-00059130, 2006-00060209, 07SP043484, 07SP044235, and 08SP008584 pertain to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to these reports.

We note, however, that 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. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). In incident report numbers 2004-00015226, 2004-00017471, and 2004-00018688, you seek to withhold under common-law privacy the "incident types" and portions of the narratives. Basic information includes the offense

committed and a detailed description of the offense. *See* Open Records Decision No. 127 at 4 (1976) (summarizing types of information made public by *Houston Chronicle*). Accordingly, we will address your arguments that the information you marked in yellow in these reports, is protected by common-law privacy and cannot be released as basic information.

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. *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. *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. This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). You indicate the information you have marked in yellow in incident report numbers 2004-00015226, 2004-00017471, and 2004-00018688 is protected by common-law privacy. Upon review, we agree some of that information, which we have marked, and the additional information we have marked, is intimate or embarrassing and of no legitimate public concern. Therefore, in releasing basic information from incident report numbers 2004-00015226, 2004-00017471, and 2004-00018688, the department may not release the information we have marked under section 552.101 in conjunction with common-law privacy. The remaining basic information in incident report numbers 2004-00015226, 2004-00017471, and 2004-00018688, as well as the basic information in incident report numbers 2006-00059130, 2006-00060209, 07SP043484, 07SP044235, and 08SP008584, must be released.¹

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). Therefore, the department must

¹As our ruling is dispositive, we need not consider your arguments under section 552.130 of the Government Code against disclosure of the marked information in incident report numbers 2006-00059130, 2006-00060209, 07SP043484, and 08SP008584.

withhold the Texas driver's license numbers you have marked in incident report number 08SP007372 under section 552.130.²

In summary, with the exception of basic information, the department may withhold incident report numbers 2004-00015226, 2004-00017471, 2004-00018688, 2006-00059130, 2006-00060209, 07SP043484, 07SP044235, and 08SP008584 pursuant to section 552.108(a)(2) of the Government Code. However, in releasing basic information from incident report numbers 2004-00015226, 2004-00017471, and 2004-00018688, the department may not release the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the Texas driver's license numbers you have marked under section 552.130 of the Government Code in incident report number 08SP007372. The remaining information in incident report number 08SP007372 must be released.³

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note you have marked a social security number under section 552.147 of the Government Code. 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# 367484

Enc. Submitted documents

c: Requestor
(w/o enclosures)