



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 20, 2010

Mr. David K. Walker
Montgomery County Attorney
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2010-05651

Dear Mr. Walker:

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# 376694 (Montgomery County ORR #2010-0432).

The Montgomery County Sheriff's Department (the "department") received a request for the police report related to case number 10A001223. You claim that some of the requested 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 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 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 state that the department seeks to withhold "only the investigative portion of this report, in addition to that portion highlighted" under section 552.108. You inform us, and have provided an affidavit from the Montgomery County District Attorney's Office stating, that the information at issue is related to a pending criminal prosecution. Based on your representation, we conclude that section 552.108(a)(1) is generally applicable to the information you seek to withhold. *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases).

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*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes a detailed description of the offense. See ORD 127 at 3-4. As you acknowledge, the department must release basic information, including a detailed description of each offense from the narrative portion of the submitted report. The department may withhold the rest of the information at issue under section 552.108(a)(1).

Portions of the basic information about one of the listed offenses include private 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 common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See *id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We have marked information that the department must withhold under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary: (1) the department may withhold the submitted information under section 552.108(a)(1) of the Government Code, except for the basic information subject to release under section 552.108(c); and (2) the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The rest of the submitted information must be released.¹

¹We note that the submitted information includes an arrested person’s social security number. 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.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 376694

Enc. Submitted documents

c: Requestor
(w/o enclosures)