



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 1, 2010

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

OR2010-09731

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# 385009.

The Town of Flower Mound (the "town"), which you represent, received a request for incident reports and information concerning 9-1-1 calls made by a named individual. You claim 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 552.101 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 information protected by 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, 683-85 (Tex. 1976). 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 information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See Open Records Decision Nos. 440 (1986), 393 (1983), 339*

(1982). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* ORD 393, 339; *see also* ORD 440 (detailed descriptions of serious sexual offenses must be withheld). In this instance, the requestor knows the identity of the alleged sexual assault victim. Thus, withholding only portions of the submitted information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, to protect the victim's privacy, the submitted information must be generally withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, that the requestor may be the authorized representative of the individual whose privacy interests are at issue. Accordingly, the requestor may have a special right of access to information that would ordinarily be withheld to protect the individual's common-law privacy interests. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Therefore, if the requestor is the authorized representative of the individual and has a special right of access to the submitted information, then it may not be withheld from her under section 552.101 in conjunction with common-law privacy. However, if the requestor does not have a special right of access, then the submitted report must be withheld in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

In the event the requestor is the authorized representative of the victim, we will address your claim under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *Id.* § 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. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a concluded case where no arrest was made and no criminal charges were filed. Based on your representations, we conclude section 552.108(a)(2) is applicable to the submitted information.

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). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, if the requestor is the authorized representative of the victim, then with the exception of basic information, the town may withhold the submitted information under section 552.108(a)(2) of the Government Code.

In summary, if the requestor is not the authorized representative of the victim, then the submitted report must be withheld in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the authorized representative of the victim, then with the exception of basic information, the town may withhold the submitted information under section 552.108(a)(2) of the Government Code.

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](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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/tp

Ref: ID# 385009

Enc. Submitted documents

c: Requestor  
(w/o enclosures)