



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 6, 2010

Ms. Michelle T. Rangel  
Assistant County Attorney  
Fort Bend County  
301 Jackson Street, Suite 728  
Richmond, Texas 77469

OR2010-09853

Dear Ms. Rangel:

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# 385465.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for any incident reports pertaining to a specified address during a specified time period. You state the sheriff will provide to the requestor some of the requested information, including basic information from incident report numbers 10-255 and 09-25556. *See* Gov't Code § 552.108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim the submitted incident reports are 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 representative sample of information.<sup>1</sup>

Section 552.108(a)(1) 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 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);

---

<sup>1</sup>We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

*see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report number 09-25556 pertains to a pending criminal investigation. Based on your representation and our review, we determine release of report number 09-25556 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. 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). Accordingly, the sheriff may withhold report number 09-25556 pursuant to section 552.108(a)(1) of the Government Code. We note you have the discretion to release all or part of this report that is not otherwise confidential by law. Gov't Code § 552.007.

Section 552.108(a)(2) 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 . . . 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[.]” *Id.* § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. 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 the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Pruitt*, 551 S.W.2d 706. You assert report numbers 10-255 and 09-323 pertain to criminal investigations that did not result in convictions or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to these reports. Accordingly, the sheriff may withhold report number 10-255 under section 552.108(a)(2) of the Government Code.<sup>2</sup>

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). Basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177, and includes a detailed description of the offense. *See* ORD127. You contend, however, some of the basic information in report number 09-323 is protected by common-law 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. This exception 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

---

<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

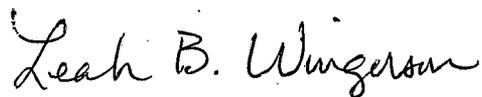
relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find the information we have marked in report number 09-323 is highly intimate or embarrassing and of no legitimate public concern. Therefore, the marked information is protected under common-law privacy, and the sheriff may not release the marked information as basic information. The remaining basic information must be released.

In summary, the sheriff may withhold report number 09-25556 under section 552.108(a)(1) of the Government Code and report number 10-255 under section 552.108(a)(2) of the Government Code. With the exception of basic information, the sheriff may withhold report number 09-323 under section 552.108(a)(2) of the Government Code. In releasing the basic information from report number 09-323, the sheriff may not release the information we have marked, which is protected under common-law privacy.

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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 385465

Enc. Submitted documents

c: Requestor  
(w/o enclosures)