



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 15, 2010

Ms. Stephanie Galanides  
City Secretary  
City of Heath  
200 Laurence Drive  
Heath, Texas 75032

OR2010-10543

Dear Ms. Galanides:

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# 386680.

The City of Heath (the "city") received a request for nine categories of information pertaining to a named officer, the arrest of a named individual, and city policies. You indicate that the city has no information responsive to portions of the request.<sup>1</sup> You state you have released some information to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977); Open Records Decision No. 434 at 2-3 (1986). You seek to withhold portions of Exhibits B and C under section 552.108. We note,

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

however, the information you seek to withhold in Exhibit C consists of an internal affairs investigation. Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you state that the information in Exhibits B and C pertains to an active criminal case that is being prosecuted by the Office of the Rockwall County District Attorney. Based on your representation, we conclude that section 552.108(a)(1) is generally applicable to the information at issue in Exhibits B and C. *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).

We note, however, that 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. 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*). Although you state you released basic information, you inform us that you did not release the narrative portion of the submitted reports. Accordingly, we determine the city must release a sufficient portion of the narrative section of the submitted reports to encompass a detailed description of the offense to satisfy the required release of basic information pursuant to *Houston Chronicle*. Therefore, with the exception of basic information, the city may withhold the information at issue in Exhibits B and C under section 552.108(a)(1).

We note, however, some of the basic information, as well as some of the remaining submitted information, is subject to 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.”<sup>2</sup> 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.

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

*Id.* at 683. We have marked the information that is highly intimate or embarrassing and not of legitimate public interest. Therefore, in releasing basic information, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The city must also withhold the information we have marked in the remaining submitted information under section 552.101 in conjunction with common-law privacy.

We note that some of the remaining information is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(2) excepts the home addresses and telephone numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2); *see* Open Records Decision No. 622 (1994). The city must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

In summary, with the exception of basic information, the city may withhold the information at issue in Exhibits B and C under section 552.108(a)(1) of the Government Code. In releasing basic information, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the information we have marked in the remaining submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The remaining information must be released.

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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/jb

Ref: ID# 386680

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)