



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 31, 2010

Ms. Angela M. DeLuca
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2010-13235

Dear Ms. DeLuca:

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# 392118.

The Bryan Police Department (the "department") received a request for information relating to a specified case number. You claim that 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 information you submitted.

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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered to be intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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 highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances where it is demonstrated that the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

The instant request for information reveals that the requestor knows the identity of the individual involved, as well as the nature of the incident to which the requested information

pertains. Therefore, withholding only the individual's identity or certain details of the incident from this requestor would not preserve the individual's common-law right to privacy. Accordingly, the submitted information is generally confidential in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

In this instance, however, the requestor identifies himself as the son of the individual to whom the information at issue pertains. As such, the requestor has a possible right of access to information that implicates the individual's privacy interests as his authorized representative. As the individual's authorized representative, the requestor would have a right under section 552.023 of the Government Code to information that the department would ordinarily be required to withhold to protect the individual's common-law right to privacy.¹ See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, if the requestor is the individual's authorized representative, the submitted information may not be withheld on privacy grounds under section 552.101 of the Government Code. If the requestor is not the individual's authorized representative, then the department must withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy.

In the event the submitted information may not be withheld under section 552.101, we address your claim under section 552.108 of the Government Code. Section 552.108(a)(2) 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[.]" Gov't Code § 552.108(a)(2). 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 information at issue is related to a case that did not result in a conviction or a deferred adjudication. Based on your representation, we conclude that section 552.108(a)(2) is generally applicable in this instance.

We note 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 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 531 S.W.2d at 186-88. The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed

¹Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

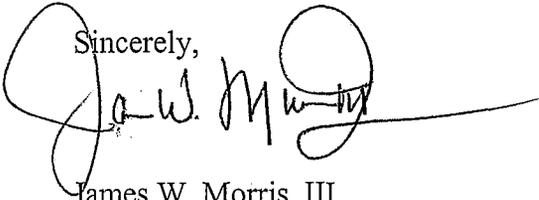
public by *Houston Chronicle*). The department may withhold the rest of the submitted information under section 552.108(a)(2).

In summary: (1) the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy, unless the requestor has a right of access to the information under section 552.023 of the Government Code; and (2) if the requestor has a right of access under section 552.023, then the department may withhold the submitted information under section 552.108(a)(2) of the Government Code, except for the basic information that must be released under section 552.108(c).²

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 392118

Enc: Submitted documents

c: Requestor
(w/o enclosures)

²We note that the department would ordinarily be required to withhold some of the basic information under section 552.101 to protect the privacy of the individual to whom the information pertains. The requestor has a right, however, to that information if he is the individual's authorized representative. See Gov't Code § 552.023(a); ORD 481 at 4.