



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2010

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

OR2010-16186

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# 398476.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a specified incident. You claim the submitted 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. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy 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). The types of information considered intimate and 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 highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated 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. In this

instance, the documents reflect the requestor knows both the identity of the individual involved and the nature of the information in the submitted documents. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right to privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the town must generally withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the requestor is the spouse of the individual whose private information is at issue. Thus, the requestor may be this individual's authorized representative. If the requestor is acting as his spouse's authorized representative, then he has a special right of access to information that would ordinarily be withheld to protect privacy interests. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). Thus, if the requestor is not acting as his spouse's authorized representative, then the town must withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy. If the requestor is acting as his spouse's authorized representative, then the town may not withhold the submitted information under section 552.101 in conjunction with common-law privacy. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). In that instance, we will consider your additional argument against disclosure.

You also claim section 552.108 of the Government Code for the submitted information. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state the submitted information pertains to a closed case in which no further action will be taken and no charges were filed. Thus, you state the case ended in a result other than conviction or deferred adjudication. Based on your representations, we find section 552.108(a)(2) of the Government Code is applicable to the submitted information.

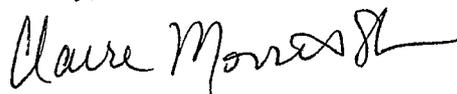
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the town may withhold the submitted information under section 552.108(a)(2).

In summary, if the requestor is not acting as his spouse's authorized representative, then the town must withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy. If the requestor is acting as his spouse's authorized representative, then with the exception of the basic information, the town may withhold the submitted information under section 552.108(a)(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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tp

Ref: ID# 398476

Enc. Submitted documents

c: Requestor
(w/o enclosures)