



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2010

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

OR2010-17468

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# 400467.

The McKinney Police Department (the "department") received a request for all incident reports and calls for service originating from a specified address or pertaining to a named individual or the requestor from April 30, 2010 to the date of the request. You claim that 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 552.108(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[.]" Gov't Code § 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 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). You state the submitted reports concern criminal investigations that did

not result in conviction or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) is applicable to the submitted reports.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle Publishing Company 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), and includes a detailed description of the offense. *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). Accordingly, except for basic information, the city may withhold the submitted reports under section 552.108(a)(2) of the Government Code. We understand you to raise section 552.101 for the basic information in 2010-069114. Therefore, we will consider your argument under section 552.101 of the Government Code for this 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 common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Upon review, we agree that portions of the basic information in report number 2010-069114 are highly intimate or embarrassing and not of legitimate public interest. Therefore, the department must withhold the information we have marked in report number 2010-069114 under section 552.101 of the Government Code in conjunction with common-law privacy.

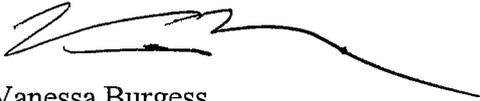
In summary, with the exception of basic information, the department may withhold the submitted reports under section 552.108(a)(2) of the Government Code. However, in releasing the basic information for report number 2010-069114, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with 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, 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,

A handwritten signature in black ink, appearing to read 'Vanessa Burgess', with a long horizontal flourish extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 400467

Enc. Submitted documents

c: Requestor
(w/o enclosures)