



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2010

Mr. Peter Scott
Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2010-18129

Dear Mr. Scott:

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# 407235 (City ID# 388).

The City of Wichita Falls (the "city") received a request for "the full investigation of case [number] 10-051030." 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 submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state, and provide a letter from the city's chief of police representing, that the submitted information pertains to a closed case that did not result in conviction or deferred adjudication. Thus, based on your representations and the provided letter, we conclude that section 552.108(a)(2) is generally applicable to the submitted information.

However, section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the 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 also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code.

You assert the basic information is confidential under common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which excepts from public disclosure private information about an individual if the information (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 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. *Id.* at 683.

Generally, information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Although, in this instance, some of the basic information is generally subject to common-law privacy, the requestor is the individual whose privacy interest is implicated. *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 that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the requestor has a right of access to the portions of the basic information which would otherwise be confidential under common-law privacy, and the city may not withhold any of the remaining basic information under section 552.101 on that basis.

In summary, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. Basic information must be released to the requestor.¹

¹The requestor in this instance has a special right of access to the information being released. *See* Gov't Code § 552.023(a). Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 407235

Enc. Submitted documents

c: Requestor
(w/o enclosures)