



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2011

Ms. Michelle L. Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2011-09255

Dear Ms. Villarreal:

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# 422358 (LGL-11-508).

The Waco Police Department (the "department") received a request for call sheets, incident reports, and offense reports pertaining to a specific address from May 1, 2008 to the date of the request. You indicate some of the responsive information will be released to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions 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 claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report number 11-3651 relates to an open and pending case and its release would interfere with the investigation and prosecution. Based on this representation and our

review, we conclude the release of the information you have marked in incident report number 11-3651 would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex 1976). Thus, the department may withhold the information you have marked in incident report number 11 3651 under section 552.108(a)(1) of the Government Code.

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). 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)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state incident report number 11-1810 concerns a closed investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) is generally applicable to incident report number 11-1810.

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 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note that basic information includes, among other items, an identification and description of the complainant and a detailed description of the offense, but does not include the identity of a victim, unless the victim is also the complainant. See ORD 127 at 3-4. Thus, with the exception of basic information, the department may withhold incident report number 11-1810 under section 552.108(a)(2) of the Government Code.¹

In this instance, you argue the basic information incident report number 11-1810 is excepted from disclosure under section 552.101 of the Government Code in conjunction with 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.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* 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. *See 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. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). However, a governmental body is required to withhold an entire report when the requestor knows the identity of the alleged victim. *See* ORD 393.

Incident report number 11-1810 involves an alleged sexual assault. Although you seek to withhold the basic information in its entirety, you have not demonstrated, nor does the information reflect, that this requestor knows the identity of the alleged sexual assault victim. As noted above, the identity of a victim is not basic information. Upon review, we find that none of the basic information in incident report number 11-1810 is highly intimate or embarrassing or of no legitimate public concern. Therefore, the department may not withhold any of the basic information under section 552.101 in conjunction with common-law privacy.

Next, you assert incident report number 11-2184 is excepted from disclosure under section 552.101 in conjunction with common-law privacy. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 343 (1982) (references in emergency medical records to drug overdoses, acute alcohol intoxication, obstetrical or gynecological illnesses, convulsions or seizures, and emotional or mental distress), 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). 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. In this instance, although you seek to withhold incident report number 11-2184 in its entirety, you have not demonstrated, nor does it otherwise appear, that incident report number 11-2184 pertains to a situation in which the information at issue must be withheld in its entirety on the basis of common-law privacy.

However, we have marked information in incident report number 11-2184 and in the remaining information that is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked under

section 552.101 of the Government Code in conjunction with common-law privacy. The remaining submitted information is not highly intimate or embarrassing or the information is of legitimate public concern, and thus may not be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *See*, Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Accordingly, the department must withhold the Texas motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.²

You indicate the social security numbers you have marked in the remaining information are excepted from disclosure under section 552.147 of the Government Code. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). The department may withhold the social security numbers you have marked in the remaining information under section 552.147(a).³

In summary, the department may withhold the information you have marked in incident report number 11-3651 under section 552.108(a)(1) of the Government Code. With the exception of basic information, the department may withhold incident report number 11-1810 under section 552.108(a)(2) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The department may withhold the social security numbers you have marked in the remaining information under section 552.147 of the Government Code. As you raise no further exceptions to disclosure, the remaining information must be released to the requestor.

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.

²We note that Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an opinion from this office.

³We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/bs

Ref: ID# 422358

Enc. Submitted documents

c: Requestor
(w/o enclosure)