



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2011

Ms. Evelyn Njuguna
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-14676

Dear Ms. Njuguna:

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# 432527 (GC No. 18800).

The Houston Police Department (the "department") received a request for incident report number 055320111-K. You claim the submitted report 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. You state incident report number 055320111-K pertains to a criminal investigation that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this report.

We note, however, section 552.108 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). Basic information includes the identity of the complainant and a detailed description of the offense. See Open Records Decision No. 127 at 4 (1976) (summarizing types of information made public by *Houston Chronicle*). We understand you to assert that certain portions of the basic information are excepted from disclosure by common-law privacy and may not be released. Accordingly, we will address your arguments 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 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. 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. *Id.* at 683. This office has found that 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. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the information which is highly intimate and embarrassing and not of legitimate public interest. Therefore, in releasing basic information, the department may not release the information we marked under section 552.101 in conjunction with common-law privacy. The remaining basic information, however, is not private, and must be released.

In summary, with the exception of basic information, the department may withhold the submitted report under section 552.108(a)(2) of the Government Code. In releasing basic information, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining basic information must be released.

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 "C. Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 432527

Enc. Submitted documents

c: Requestor
(w/o enclosures)