



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2011

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

OR2011-14697

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# 432552 (ORR#'s 10-4147 and 10-4395).

The McKinney Police Department (the "department"), which you represent, received requests from two different requestors. The first requestor seeks incident report numbers 11-004687, 11-004488, and 07-070165, while the second requestor seeks incident report number 11-004687. You claim the submitted incident reports are 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. This section encompasses the doctrine of common-law privacy, which protects information if it (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 types of information considered highly 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. You assert some of the information in report number 11-004488 is

protected by common-law privacy. Upon review, we find some of the information, which we have marked, is highly intimate or embarrassing and of no legitimate public concern. Therefore, the department must withhold the information we have marked in report number 11-004488 under section 552.101 of the Government Code in conjunction with common-law privacy.

The remaining information in report number 11-004488 contains a Texas driver's license number. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license issued by a Texas agency, or an agency of another state or country, is excepted from public release.¹ 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(a)(1)). Therefore, the department must withhold the driver's license number we have marked in report number 11-004488 under section 552.130 of the Government Code. As you have not claimed any other exceptions to disclosure for report number 11-004488, the department must release the remaining information in report number 11-004488.

Next, we note incident report number 07-070165 reflects the department investigated the incident as an alleged child abuse or neglect case. Thus, report number 07-070165 is confidential under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² *See* Fam. Code § 261.201(a) (providing information used or developed in investigation of alleged or suspected child abuse or neglect is confidential). In this instance, however, the first requestor is a parent of the child victim listed in the report, and the parent is not suspected of having committed the alleged abuse or neglect. As such, report number 07-070165 may not be withheld from the first requestor under section 261.201(a).³ *Id.* § 261.201(k) (providing child's parent can obtain information that is subject to section 261.201(a) concerning reported abuse or neglect of child as long as parent is not alleged to have committed abuse or neglect). Section 261.201(l)(2), however, provides any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). We will, therefore, consider your argument against disclosure for report number 07-070165 under section 552.108 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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²Section 552.101 also encompasses information made confidential by other statutes.

³Because report number 07-070165 would otherwise be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

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); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 07-070165 pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to report number 07-070165.

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 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 Pruitt*, 551 S.W.2d 706. You state incident report number 11-004687 pertains to a pending criminal investigation. Based on your representation and our review, we determine release of this report 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 that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find report number 11-004687 is subject to section 552.108(a)(1) of the Government Code.

Section 552.108, however, 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*, and includes the identity of the complainant. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). In this instance, the complainant in report number 07-070165 is also the reporting party for purposes of section 261.201 of the Family Code. Section 261.201(l)(3) states that, notwithstanding section 261.201(k), the identity of the reporting party must be withheld. *See* Fam. Code § 261.201(l)(3). Thus, with the exception of basic information, the department may withhold incident report number 07-070165 under section 552.108(a)(2) of the Government Code and incident report number 11-004687 under section 552.108(a)(1) of the Government Code. However, in releasing basic information from incident report number 07-070165, the department must withhold the reporting party’s identity under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

In summary, the department must withhold the information we have marked in report number 11-004488 under section 552.101 of the Government Code in conjunction with common-law privacy and under section 552.130 of the Government Code. The department must release the remaining information in report number 11-004488. With the exception of basic information, the department may withhold report number 07-070165 under section 552.108(a)(2) of the Government Code and report number 11-004687 under section 552.108(a)(1) of the Government Code. In releasing basic information from report number 07-070165, the department must withhold the reporting party's identity under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 432552

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)