



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2011

Ms. Lizbeth Islas Plaster
City Attorney
City of Lewisville
P.O. Box 299002
Lewisville, Texas 75029-9002

OR2011-14747

Dear Ms. Plaster:

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# 432743.

The City of Lewisville (the “city”) received a request for all reports for a specified address for a specified period of time. You state the city has released some of the requested information. You claim that some of 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) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that incident report number 11-06543 relates to a criminal case that is pending investigation. Based upon your representation and our review, we conclude that release of the 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). Thus, section 552.108(a)(1) is applicable to incident report number 11-06543.

Section 552.108(a)(2) 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 that incident report number 11-06925 pertains to a criminal case that concluded in a result other than conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to incident report number 11-06925. You state that incident report number 11-02269 “is currently ‘inactive’ and the investigation suspended due to a lack of evidence or leads.” As noted above, section 552.108(a)(2) is applicable only if the information at issue is related to a *concluded* criminal case “that did not result in conviction or deferred adjudication[.]” *Id.* § 552.108(a)(2). Thus, we find you have not demonstrated incident report number 11-02269 relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Accordingly, the city may not withhold incident report number 11-02269 on this basis.

As you acknowledge, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Basic front-page information refers to the information held to be public in *Houston Chronicle*, and includes, among other items, a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). The city must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. Although you state you have released the first two pages of incident report number 11-06543, we note these pages of this report do not contain a detailed description of the offense sufficient to satisfy the requirement that basic information be released. *See* ORD 127. Accordingly, we determine the city must release a sufficient portion of incident report number 11-06543 to satisfy the required release of basic information pursuant to *Houston Chronicle*. Thus, with the exception of the basic front page offense and arrest information, the city may withhold incident report number 11-06543 based on section 552.108(a)(1) of the Government Code and incident report number 11-06925 based on section 552.108(a)(2) of the Government Code.

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 common-law right of 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 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).

You seek to withhold incident report numbers 11-02286 and 11-05839 in their entirety on the basis of common-law privacy. 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, incident report number 11-05839 reveals the requestor knows the identity of the individual involved as well as the nature of the information in the report. Therefore, withholding only the individual's identity or certain details of the incident from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the city must withhold incident report 11-05839 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Although you also seek to withhold incident report number 11-02286 in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation in which the report must be withheld in its entirety on the basis of common-law privacy. However, we note portions of the report are highly intimate or embarrassing and of no legitimate public concern. We also note information within incident report number 11-02269 and within the basic information in incident report number 11-06543 is highly intimate or embarrassing and of no legitimate public concern. Therefore, the city must withhold the information we have marked in incident report numbers 11-02269, 11-02286, and 11-06543 under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of basic information, the city may withhold incident report number 11-06543 based on section 552.108(a)(1) of the Government Code and incident report number 11-06925 based on section 552.108(a)(2) of the Government Code. The city must withhold incident report number 11-05839 in its entirety and the information we have marked in incident report numbers 11-02269 and 11-02286 and in the basic information in incident report number 11-06543 under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information.

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 cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 432743

Enc. Submitted documents

c: Requestor
(w/o enclosures)