



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 19, 2011

Ms. Diana Davis  
Records Clerk  
City of Harker Heights  
305 Miller's Crossing  
Harker Heights, Texas 76548

OR2011-15265

Dear Ms. Davis:

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# 438030 (Harker Heights #11-01426).

The City of Harker Heights (the "city") received a request for all files and pictures related to a specified incident involving the requestor. You claim that 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 552.101 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 demonstrated. *See id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. Although you raise common law privacy for the narrative incident report

contained in Enclosure 2, we note that information pertains to the requestor. Section 552.023 of the Government Code states a person or a person's authorized representative has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (governmental body may not deny access to whom information relates or person's authorized representative on grounds that information is considered confidential by privacy principles). Thus, the requestor has a right of access to his own private information pursuant to section 552.023, and the city may not withhold any portion of the information at issue from this requestor under section 552.101 of the Government Code on the basis of common-law privacy.

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A). You state that the submitted information relates to a case that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) of the Government Code is applicable to the submitted information.

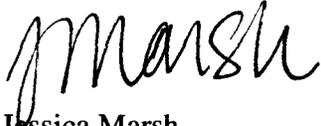
However, as you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). This information includes, but is not limited to, the details of the arrest, the physical condition of the arrested person, and a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). With the exception of basic information, the city may withhold the submitted information under section 552.108(a)(2) of the Government 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](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 "jmarsh". The signature is written in a cursive, lowercase style.

Jessica Marsh  
Assistant Attorney General  
Open Records Division

JM/sdk

Ref: ID# 438030

Enc. Submitted documents

c: Requestor  
(w/o enclosures)