



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2011

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-15422

Dear Ms. Evans:

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# 434025 (GC 18813).

The Houston Police Department (the "department") received a request for specified offense reports and calls for service. You state the department will make the requested calls for service available to the requestor. You claim the submitted 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.

You raise section 552.108(a)(2) of the Government Code for report numbers 002087611J, 067903111A, and 075194311I. 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). 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 claiming an exception to disclosure under section 552.108 must reasonably explain how and why this exception applies to the information it seeks to withhold. *See id.* §§552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977). You state report numbers 002087611J and 067903111A pertain to criminal investigations that did not result in conviction or deferred adjudication. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to these reports. You also state report number 075194311I pertains to a criminal investigation involving two suspects that did not result in conviction or deferred adjudication for one of the suspects. Further, you assert that

although the other suspect was convicted in connection with this matter, the information concerning the convicted suspect and the suspect who was not convicted is so intertwined that it cannot easily be separated. Based on your representations and our review, we agree the information at issue cannot be separated. Accordingly, we find section 552.108(a)(2) is also applicable to report number 075194311I.

You raise section 552.108(a)(1) of the Government Code for report number 019122711I. Section 552.108(a)(1) 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). As noted above, a governmental body claiming an exception to disclosure under section 552.108 must reasonably explain how and why this exception applies to the information it seeks to withhold. *See id.* §§552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. You state report number 019122711I pertains to a criminal investigation that is inactive pending additional leads. You also state the statute of limitations has not run and the investigation may be reactivated once additional leads are developed. Based on your representations and our review, we conclude the release of report number 019122711I 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 this report.

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*, and includes a detailed description of the offense. *See id.*; *see also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Therefore, with the exception of basic information, the department may withhold report numbers 002087611J, 067903111A, and 075194311I under section 552.108(a)(2), and report number 019122711I under section 552.108(a)(1).

However, you seek to withhold portions of the basic information in report numbers 002087611J and 067903111A under 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. This exception 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 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.

Upon review, we agree that portions of the basic information in report numbers 002087611J and 067903111A are highly intimate or embarrassing and of no legitimate public concern. In addition, although you raise no exceptions to the disclosure of the submitted calls for service, we have marked information in these calls for service that is highly intimate or embarrassing and of no legitimate public interest. Thus, in releasing the calls for service and the basic information in report numbers 002087611J and 067903111A to the requestor, the department must withhold the information we marked under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of basic information, the department may withhold report numbers 002087611J, 067903111A, and 075194311I under section 552.108(a)(2) of the Government Code, and report number 019122711I under section 552.108(a)(1) of the Government Code. However, in releasing the calls for service and the basic information in report numbers 002087611J and 067903111A to the requestor, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 434025

Enc. Submitted documents

c: Requestor
(w/o enclosures)