



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2011

Mr. Peter G. Smith
City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2011-15623

Dear Mr. Smith:

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# 434117 (File No. 11-605).

The Richardson Police Department (the "department") received a request for all records pertaining to a specified address. You state some of the responsive information has been released. You also state you have withheld certain information pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted incident reports are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We also

¹We note Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code supercedes Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684.

understand you to raise section 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You seek to withhold incident reports 01-079314, 02-000317, 10-106199, and 11-081212 on the basis of 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. 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 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. This office also has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). 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 information must be withheld in its entirety to protect the individual’s privacy. Although you assert the incident reports at issue are confidential in their entirety pursuant to common-law privacy, we find this is not a situation where all of this information must be withheld to protect any individual’s privacy interest. However, upon review, we have marked the information in incident reports 01-079314, 02-000317, 10-106199, and 11-081212 that is highly intimate or embarrassing and of no legitimate public concern. Accordingly, this information must be withheld under section 552.101 in conjunction with common-law privacy. However, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

You raise section 552.108(a)(2) of the Government Code for incident reports 02-010267, 11-017101, 11-074916, and 11-081679. 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 the incident

reports at issue pertain to crimes which did not result in a conviction or deferred adjudication. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to these incident reports.

However, 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). See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). We note basic information includes a detailed description of the offense. See *id.* at 4. Thus, with the exception of basic information, the department may withhold incident reports 02-010267, 11-017101, 11-074916, and 11-081679 under section 552.108(a)(2).²

Finally, you claim some of the remaining information is subject to section 552.130 of the Government Code. This section provides information relating to a motor vehicle operator’s license or driver’s license issued by an agency of this state, or another state or country, is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as amendments to Gov’t Code § 552.130(a)(1)). Upon review, we agree the department must withhold the remaining information you have marked, as well as the information we have marked, under section 552.130.

In summary, the department must withhold the information we marked in incident reports 01-079314, 02-000317, 10-106199, and 11-081212 under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold incident reports 02-010267, 11-017101, 11-074916, and 11-081679 under section 552.108(a)(2) of the Government Code. The department must withhold the remaining information marked under section 552.130 of the Government Code. 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,

²We note the portions of incident reports 11-017101, 11-074916, and 11-081679 that you have marked under sections 552.130 and 552.136 of the Government Code do not consist of basic information. Accordingly, our ruling under section 552.108(a)(2) of the Government Code is dispositive of this information and we need not address these exceptions.

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 'K. Leland Conyer', written in a cursive style.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 434117

Enc. Submitted documents

c: Requestor
(w/o enclosures)