



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2011

Mr. Whitt L. Wyatt
Assistant City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2011-18386

Dear Mr. Wyatt:

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# 439703 (Richardson file number 11-704).

The Richardson Police Department (the "department") received a request for the arrest warrant and accompanying affidavit or accident report relating to a specified arrest. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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). 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). You state the submitted information concerns a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) is applicable to the submitted information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), and includes a detailed description of the offense. *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). We note that basic information described in *Houston Chronicle* does not include Texas motor vehicle record information subject to section 552.130 of the Government Code. Accordingly, except for basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.¹

Next, we understand you to claim some of the basic information is protected by 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 satisfied. *Id.* at 681-82.

The types of information considered intimate and 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 the information you have marked, in addition to the information we have marked, is highly intimate or embarrassing and not of legitimate public interest. Thus, the marked information generally must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, the requestor may be the authorized representative of the individual whose privacy interests are implicated. As the individual’s authorized representative, the requestor would have a right of access under section 552.023 of the Government Code to information the department would be required to withhold from the public to protect the individual’s privacy. *See* Gov’t Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).² Therefore, if the requestor is the individual’s authorized representative, then the

¹As our ruling is dispositive, we do not address your section 552.130 argument against disclosure.

²Section 552.023 provides in part that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a).

department may not withhold the marked information from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy.³ If the requestor is not the individual's authorized representative, then the department must withhold the information you have marked, and the additional information we have marked, under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. However, in releasing basic information, if the requestor is not the authorized representative of the individual at issue, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/ag

Ref: ID# 439703

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³In that event, we note the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023. Because such information may be confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.