



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2012

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2012-00297

Dear Ms. Pemberton:

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# 441809 (Reference No. W006599).

The Killeen Police Department (the "department") received a request for all records during a specified time period pertaining to the requestor and his named wife, or a specified address. You state the department has provided some of the requested information, including basic information for incident report numbers 11-004028, 11-004022, 11-003575, and 11-002224, to the requestor. *See* Gov't Code § 552.108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim the submitted incident and call for service 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.

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 section 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 types 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 also 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).

Although you assert call for service report numbers 1188978, 1185871, and 1185821 are protected by common-law privacy and should be withheld in their entirety, you have not demonstrated, nor does the information reflect, the call for service reports involve situations in which the information must be withheld in its entirety on the basis of common-law privacy. Furthermore, we note the requestor is the individual whose information is at issue in report numbers 1185871 and 1185821. As such, the requestor has a special right of access to any information that would be withheld from public disclosure for the purpose of protecting his own privacy interests. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, the department may not withhold from this requestor any part of report number 1185871 or report number 1185821 on the basis of common-law privacy.

Report number 1188978, however, contains highly intimate or embarrassing information, which we have marked, that we find is not of legitimate public interest. We note, however, the requestor is the spouse of the individual whose privacy interests are at issue in report number 1188978. If the requestor is acting as his wife's authorized representative, then the requestor has a right of access to the information we have marked pursuant to section 552.023 of the Government Code, and the department must release this information to him. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). If the requestor is not acting as his wife's authorized representative, then the department must withhold the information we have marked in report number 1188978 under section 552.101 of the Government Code in conjunction with common-law privacy. You have not established any of the remaining information in report number 1188978 is highly intimate or embarrassing. Consequently, none of the remaining information in report number 1188978 may be withheld on the basis of common-law privacy. As you have not claimed any other exceptions to disclosure for report numbers 1188978, 1185871, and 1185821, the department must release report numbers 1185871 and 1185821 and the remaining information in report number 1188978.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection,

investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report number 11-002224 pertains to a pending criminal investigation. Based on your representation and our review, we determine release of this 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). Accordingly, the department may withhold incident report number 11-002224 under section 552.108(a)(1) of the Government Code.

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[.]” *Id.* § 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 a 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); *Pruitt*, 551 S.W.2d 706. You assert incident report numbers 11-004028, 11-004022, and 11-003575 pertain to criminal investigations that did not result in convictions or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to these reports. Accordingly, the department may withhold incident report numbers 11-004028, 11-004022, and 11-003575 under section 552.108(a)(2) of the Government Code.

In summary, if the requestor is not acting as his wife’s authorized representative, the department must withhold the information we have marked in call for service report number 1188978 under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold incident report number 11-002224 under section 552.108(a)(1) of the Government Code. The department may withhold incident report numbers 11-004028, 11-004022, and 11-003575 under section 552.108(a)(2) of the Government Code. The department 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 "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 441809

Enc. Submitted documents

c: Requestor
(w/o enclosures)