



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 13, 2012

Mr. Joseph J. Gorfida, Jr.
Assistant City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2012-02219

Dear Mr. Gorfida:

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# 445165 (Richardson Reference Nos. 11-859 and 12-013).

The Richardson Police Department (the "department") received two requests from different requestors for two specified incident reports. You state you are withholding social security numbers pursuant to section 552.147(b) of the Government Code.¹ You also state you are withholding motor vehicle record information pursuant to Open Records Decision No. 684 (2009).² You claim the submitted information is excepted from disclosure under

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

²Open 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(a)(1) of the Government Code and Texas license plate numbers under section 552.130(a)(2) 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* 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 id.* § 552.130(d)-(e). Thus, the statutory amendments to section 552.130 of the Government Code superceded Open Records Decision No. 684 on September 1, 2011.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.

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 doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual’s privacy. You seek to withhold the submitted reports in their entirety from the first requestor under section 552.101 in conjunction with common-law privacy.³ In this instance, the request reveals the first requestor knows the identity of the individual involved as well as the nature of the information in the submitted reports. Therefore, withholding only the individual’s identity or certain details of the incidents from the first requestor would not preserve the subject individual’s common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold the submitted reports in their entirety from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy.⁴

With regards to the second requestor, you claim the submitted reports are excepted under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted reports relate to closed criminal investigations that did not result in convictions

³We understand you do not seek to withhold the submitted reports from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy because the second requestor is the person whose privacy rights would be implicated. Gov’t Code § 552.023 (person has special right of access to information that relates to the person and is protected by laws intended to protect person’s privacy interests).

⁴As our ruling is dispositive for this information with regards to the first request, we need not address your remaining argument against its release.

or deferred adjudications. Based on your representation and our review, we find section 552.108(a)(2) is generally applicable to the submitted reports.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publ'g 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 at 3-4 (1976) (summarizing types of information considered to be basic information). Accordingly, except for basic information, the department may withhold the submitted reports from the second requestor under section 552.108(a)(2) of the Government Code.

In summary, with regards to the first requestor, the department must withhold the submitted reports under section 552.101 of the Government Code in conjunction with common-law privacy. With regards to the second requestor, except for basic information, the department may withhold the submitted reports 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, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 445165

Enc. Submitted documents

c: Requestor
(w/o enclosures)