



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2012

Mr. Whitt L. Wyatt
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 North Akard Street
Dallas, Texas 75201

OR2012-05152

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# 450378 (Reference No. 53759).

The Allen Police Department (the "department"), which you represent, received a request for information pertaining to two specified incidents and all police reports pertaining to the requestor, a named individual, and a specified address for a specified time period. You claim the submitted information is 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. Section 552.101 encompasses the common-law right of privacy, which protects information if it (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). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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 that 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.

We note report 08001847 reflects that the requestor knows the nature of the incident to which the report pertains and the identity of the named individual involved. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the named individual's common-law right to privacy. Accordingly, to protect the named individual's privacy, the department must withhold report 08001847 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 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.* § 552.301(e)(1)(A). You state, and provide documentation demonstrating, that report 11071372 relates to an active criminal investigation. Based on your representations and our review, we conclude that the release of report 11071372 would interfere with the detection, investigation, or prosecution of crime, and we agree section 552.108 is applicable. *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).

Section 552.108, however, 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*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold report 11071372 under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold report 08001847 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the department may withhold report 11071372 under section 552.108(a)(1) 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.

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/akg

Ref: ID# 450378

Enc. Submitted documents

c: Requestor
(w/o enclosures)