



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 14, 2012

Mr. B. Chase Griffith  
Counsel for the City of McKinney  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road  
Richardson, TX 75081

OR2012-07087

Dear Mr. Griffith:

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# 453529 (ORR# 10-5076).

The McKinney Police Department (the "department"), which you represent, received a request for a specified incident report. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.1175 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

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[.]" 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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal investigation. Based upon this representation and our review, we conclude release of the information at issue 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)

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<sup>1</sup>Although you raise section 552.117, we note section 552.1175 is the proper exception to raise in this instance because the department does not hold the information at issue in an employment capacity.

(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, we conclude section 552.108(a)(1) of the Government Code is generally 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. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle* and includes the identification and description of the complainant. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, you may withhold the submitted information from disclosure under section 552.108(a)(1).

You assert some of the basic information is excepted under section 552.1175 of the Government Code. Section 552.1175(b) provides in part the following:

Information that relates to the home address, home telephone number, emergency contact information, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). Upon review, we determine the department must withhold the information we have marked under section 552.1175 of the Government Code if it relates to a peace officer who elects to restrict access to the information in accordance with section 552.1175(b).<sup>2</sup> However, if the individual to whom the information pertains is no longer a licensed peace officer or does not elect to restrict access to his information, the department may not withhold the information we have marked under section 552.1175.

You claim the remaining basic information is excepted under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>3</sup> Section 552.101 encompasses

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<sup>2</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

<sup>3</sup>Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

the doctrine of common-law 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 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. We note that privacy is a personal right that lapses at death, and thus common-law privacy is not applicable to information that relates only to a deceased individual. See *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). In this instance, the information at issue pertains to a deceased individual and does not implicate the privacy interest of any living individual. Accordingly, the remaining basic information is not protected by common-law privacy and may not be withheld on that basis under section 552.101 of the Government Code.

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information, the department must withhold the information we have marked pursuant to section 552.1175 of the Government Code if it relates to a peace officer who elects to restrict access to the information in accordance with section 552.1175(b).

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](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 Opperman  
Assistant Attorney General  
Open Records Division

SO/som

Ref: ID# 453529

Enc. Submitted documents

c: Requestor  
(w/o enclosures)