



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2012

Ms. Michelle Rangel
Assistant County Attorney
Fort Bend County
William B. Travis Building
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2012-08827

Dear Ms. Rangel:

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# 455886.

The Fort Bend County Sheriff’s Office (the “sheriff’s office”) received a request for two specified offense reports, including any associated photographs or video footage, and a specified sheriff’s office call slip. You state the sheriff’s office will release the specified call slip. 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 552.108(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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report number 11-33399, and the associated photographs and audio recording on the submitted CD, relates to a case that is currently pending with the sheriff’s office. You argue release of this information could hinder the investigation or prosecution of the case. Based on these representations and our review, we conclude release of incident report number 11-33399 and the associated CD would interfere with the detection, investigation, or prosecution of a 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 per curiam*, 536 S.W.2d 559 (Tex. 1976).

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). A governmental body claiming section 552.108(a)(2) must demonstrate 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). You state incident report number 11-31353 relates to a closed case that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) of the Government Code is applicable to incident report number 11-31353 and its associated call slip.

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*. *See* 531 S.W.2d at 186-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff’s office may withhold incident report number 11-33399 and its associated CD under subsection 552.108(a)(1) of the Government Code and incident report number 11-31353 and its associated call slip under subsection 552.108(a)(2) of the Government Code. We note, however, a portion of the basic information related to incident report number 11-31353 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. This section encompasses 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). 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. Upon review, we find the information we have marked in incident report number 11-31353 is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the sheriff’s office must withhold the information we have marked from the basic information in incident report number 11-31353 under section 552.101 of the Government Code in conjunction with common-law privacy.

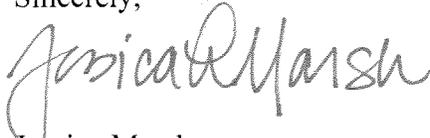
In summary, the sheriff’s office may withhold incident report number 11-33399, and its associated CD, under subsection 552.108(a)(1) and incident report number 11-31353, and its associated call slip, under subsection 552.108(a)(2) of the Government Code but must release basic information. In releasing basic information from incident report number 11-31353, the

sheriff's office must withhold the information we have marked 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,

A handwritten signature in cursive script that reads "Jessica Marsh".

Jessica Marsh
Assistant Attorney General
Open Records Division

JM/bs

Ref: ID# 455886

Enc. Submitted documents

c: Requestor
(w/o enclosures)