



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 1, 2012

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-12035

Dear Ms. Evans:

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# 460667 (GC No. 19704).

The Houston Police Department (the "department") received a request for six specified incident reports. You state some of the requested information either has been or will be released. You claim other responsive 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 information you submitted.

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 exception encompasses 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered to be intimate and 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.

In this instance, the information submitted as Exhibit 3 reveals that the requestor knows the nature of the incident to which the information pertains and the identity of the individual

involved. Therefore, withholding only the individual's identity or certain details of the incident from this requestor would not preserve the individual's common-law right to privacy. Thus, to protect the privacy of the individual involved, the city must withhold Exhibit 3 from this requestor in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information other statutes make confidential. Section 261.201 of the Family Code provides in part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). We find the information submitted as Exhibits 2 and 2A was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code or in providing services as a result of an investigation, so as to be generally confidential under section 261.201(a)(2). *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); Penal Code § 22.04(c) (defining “child” for purposes of offense of injury to a child). In this instance, however, the requestor is a parent of the child who was the victim of the alleged or suspected abuse, and the requestor is not accused of committing the abuse. Therefore, the department may not withhold Exhibits 2 and 2A from this requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). Section 261.201(l) provides, however, that the identity of the reporting party must be withheld. *See id.* § 261.201(l)(3). Section 261.201(l) further provides that any information excepted from disclosure under the Act or other law may be withheld. *See id.* § 261.201(l)(2). Therefore, we will consider your claim for Exhibits 2 and 2A under section 552.108 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[.]” Gov’t Code § 552.108(a)(2). 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 Exhibits 2 and 2A pertain to a criminal investigation that did not result in a conviction or a deferred adjudication. You explain the investigation concluded in a dismissal of the charges against the suspect. Based on your representations, we conclude section 552.108(a)(2) of the Government Code is generally applicable to Exhibits 2 and 2A.

We note 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). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle Publishing 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* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information, including a detailed description of the offense, even if the information does not actually appear on the front page of an offense or arrest report. Except for basic information, the department may withhold Exhibits 2 and 2A under section 552.108(a)(2) of the Government Code. In releasing basic information, the department must withhold the information we have marked that identifies the reporting parties under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.¹

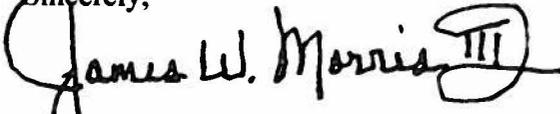
¹We note the requestor has a right of access in this instance to information the city would be required to withhold from the general public. Should the city receive another request for this same information from a different requestor, the city should resubmit this information and request another ruling. *See* Gov’t Code §§ 552.301(a), .302.

In summary, the department (1) must withhold Exhibit 3 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy; (2) may withhold Exhibits 2 and 2A under section 552.108(a)(2) of the Government Code, except for basic information under section 552.108(c), which must be released; and (3) in releasing basic information, must withhold the information we have marked that identifies the reporting parties under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.²

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 black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "III" at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 460667

Enc: Submitted documents

c: Requestor
(w/o enclosures)

²We note basic information includes an arrested person's social security number. Section 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.