



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2012

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Ste 800
Richardson, Texas 75081

OR2012-13321

Dear Mr. Griffith:

As an attorney representing the City of McKinney, 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 # 462847-12 (ORR No. 10-5540).

The City of McKinney Police Department (the "department") received a request for the report for case number 12-004058. You claim the submitted information is excepted from disclosure under section 552.108(a)(2) of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This section encompasses common-law privacy and excepts from disclosure private facts about an individual. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information is excepted from required public disclosure by a common-law right of privacy if the information (1) 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.*, 540 S.W.2d 668.

¹The Office of the Attorney General will raise mandatory exceptions like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In Open Records Decision No. 393 (1983), this office concluded that, generally, only information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this case, there are two requestors who are jointly seeking the information at issue. While one of the requestors is the person whose privacy is implicated by the release of the information,² the other requestor knows the identity of the alleged victim. Thus, we believe, in this instance, withholding only identifying information from this other requestor would not preserve the victim's common-law right to privacy. We conclude, therefore, the department must withhold the information at issue in its entirety pursuant to section 552.101, unless the department concludes the other requestor is seeking the information as the authorized representative of the person whose privacy is implicated by the release of the information. A governmental body may not withhold information on privacy grounds when the requestor is the authorized representative of the person whose privacy rights are implicated by the release of the information. *See* Gov't Code § 552.023(a). Thus, if the other requestor seeks the information as the person's authorized representative, we must consider your section 552.108(a)(2) claim.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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. You state the case has been closed and no further action will be taken. You inform us no charges were filed and "the case ended in a result other than conviction or deferred adjudication." Therefore, we agree that section 552.108(a)(2) is applicable.

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 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). Thus, with the exception of the basic front page offense and arrest information, you may withhold the requested information from disclosure based on section 552.108(a)(2).

²A governmental body may not withhold information on privacy grounds when the requestor is the person whose privacy rights are implicated by the public release of the information. *See* Gov't Code § 552.023(a).

In summary, if the requestor is the authorized representative of the person whose privacy is implicated by the public release of the information, except for the basic information, which the department must release, the department may withhold the information at issue based on section 552.108(a)(2). If the department concludes the requestor is not seeking the information as the person's authorized representative, the department must withhold the information at issue in its entirety pursuant to section 552.101.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/sdk

Ref: ID# 462847

Enc. Submitted documents

c: Requestor
(w/o enclosures)