



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 17, 2012

Ms. Skye Masson  
Assistant City Attorney  
City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627-0409

OR2012-16604

Dear Ms. Masson:

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# 468090 (ORR 312).

The Georgetown Police Department (the "department") received a request for the police report or details of the call concerning a specified incident. 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)(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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state the submitted information relates to a case that concluded in a result other than conviction or deferred adjudication. Based on your

representation and our review, we agree section 552.108(a)(2) is generally applicable to this information.

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 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 Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes, among other items of information, a detailed description of the offense. See *Houston Chronicle*, 531 S.W.2d at 186-87; ORD 127 at 3-4. Thus, with the exception of the basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.<sup>1</sup>

You raise section 552.101 of the Government Code in conjunction with common-law privacy for the basic information. Section 552.101 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 common-law right to 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 met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *Id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Additionally, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated 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.

You claim the basic information is protected in its entirety by common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which this information must be withheld in its entirety on the basis of common-law privacy. Upon review, however, we agree that portions of the narrative, which we have marked, are highly intimate or embarrassing and of no legitimate public concern. Accordingly, in releasing basic information, the department must withhold this information under

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<sup>1</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

section 552.101 of the Government Code in conjunction with common-law privacy. However, the department has failed to demonstrate how the remaining basic information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any of this information under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. However, in releasing the basic information, the department 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](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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 468090

Enc. Submitted documents

c: Requestor  
(w/o enclosures)