



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2012

Mr. Joseph J. Gorfida, Jr.
Assistant City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2012-17689

Dear Mr. Gorfida:

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# 474265 (City of Richardson File Nos. 12-757 and 12-782).

The Richardson Police Department (the "department") received two requests for report number 201200112288. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). You state the submitted information pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on your representations and our review, we conclude the department has demonstrated that section 552.108(a)(2) is applicable to the submitted information.

We note, however, that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. Department 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 also 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, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.

You assert portions of the basic information are excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. 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 exception encompasses the doctrine of 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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. This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked in the basic information is highly intimate or embarrassing and not of legitimate public interest. Thus, the department must withhold from the first requestor the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, as the individual with the privacy interest, the second requestor has a special right of access to information that would ordinarily be withheld to protect his own privacy interest, and such information cannot be withheld from him on that basis. See Gov't Code § 552.023(b) ("person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"). Accordingly, the department may not withhold from the second requestor the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. As our ruling is dispositive, we need not address your remaining arguments.

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. In releasing basic information, the department must withhold from the first requestor the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release all of the basic information to the second requestor.

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/tch

Ref: ID# 474265

c. Submitted documents

c: Two Requestors
(w/o enclosures)