



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2012

Ms. Rachel L. Lindsay
Counsel for City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2012-18602

Dear Ms. Lindsay:

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# 476459 (ORR# 10-6308).

The McKinney Police Department (the "department"), which you represent, received a request for information involving a specified address and time period. 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 information you submitted.

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 that claims section 552.108 must reasonably explain how and why this exception 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 the submitted information is related to a concluded investigation that did not result in a conviction or a deferred adjudication. Based on your representations, we conclude section 552.108(a)(2) is applicable in this instance.

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 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

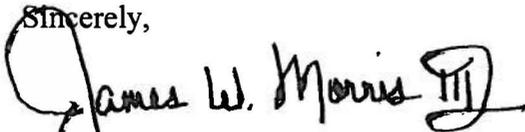
Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. Except for basic information under section 552.108(c), the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.¹

We note basic information includes an identification and description of the complainant and a detailed description of the offense. In this instance, the submitted information is related to an alleged sexual offense. 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 is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has concluded common-law privacy protects information that either identifies or tends to identify a victim of a sexual assault or other sex-related offense. See Open Records Decision Nos. 393 (1983), 339 (1982). Therefore, in releasing basic information, the department must withhold the information we have marked that identifies the complainant 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,



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

JWM/bhf

¹As we are able to make this determination, we need not address your other claim under section 552.108.

Ref: ID# 476459

Enc: Submitted documents

c: Requestor
(w/o enclosures)