



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 27, 2012

Mr. Steven Meyer  
Assistant City Attorney  
Arlington Police Department  
Mail Stop 04-0200  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2012-18980

Dear Mr. Meyer:

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# 472618 (Ref. Nos. 9049-091812, 9137-092612, 9144-092612).

The Arlington Police Department (the "department") received three requests for information related to a specified incident. You claim that the requested 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 552.101 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 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.

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. 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 information must be withheld in its entirety to protect the individual's privacy.

In this instance, the submitted information reveals that two of the requestors know the identity of the individual involved as well as the nature of the information in the submitted records. Therefore, withholding only the individual's identity or certain details of the incident from these requestors would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold the submitted information in its entirety from the second requestor (reference number 9137-092612) and third requestor (reference number 9144-092612) under section 552.101 of the Government Code in conjunction with common-law privacy.

While you also seek to withhold the information at issue in its entirety from the first requestor (reference number 9049-091812), we find you have not demonstrated, nor does it otherwise appear, this is a situation in which this information must be withheld in its entirety under section 552.101 of the Government Code on the basis of common-law privacy. Accordingly, we will address your arguments under section 552.108 of the Government Code for the information requested by the first requestor.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the submitted information relates to a pending criminal case. Based on your representation and our review, we find the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108, however, 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*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the submitted information from the first requestor under section 552.108(a)(1) of the Government Code.

You also argue portions of the basic information are subject to section 552.101 of the Government Code in conjunction with common-law privacy. As noted above, common-law privacy protects information that is highly intimate or embarrassing and is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. Upon review, we find the

department must withhold the information we have marked in the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the submitted information in its entirety from the second requestor (reference number 9137-092612) and third requestor (reference number 9144-092612) under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold the submitted information from the first requestor (reference number 9049-091812) under section 552.108(a)(1) of the Government Code. In releasing basic information to the first requestor, the department must withhold the information we have marked in the basic information 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 472618

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)