



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 15, 2013

Ms. L. Carolyn Nivens  
For City of Friendswood  
Ross, Banks, May, Cron & Cavin, P.C.  
2 Riverway, Suite 700  
Houston, Texas 77056

OR2013-00890

Dear Ms. Nivens:

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# 476411 (W002083-102412).

The Friendswood Police Department (the "department"), which you represent, received a request for a specified incident report. You state some information has been released to the requestor. You claim the remaining submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> 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). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A). You state the submitted information is related to a criminal investigation that concluded in a result other than conviction or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is applicable in this instance.

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<sup>1</sup>Although you raise sections 552.021 and 552.023 of the Government Code, we note these sections are not exceptions to disclosure under the Act. *See* Gov't Code §§ 552.021, 023.

As you acknowledge, 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 *Houston Chronicle*). Basic information includes a detailed description of the offense. *Id.* Therefore, except for basic information, the department may withhold the information at issue under section 552.108(a)(2) of the Government Code.<sup>2</sup>

You raise section 552.101 of the Government Code in conjunction with common-law privacy for a portion of the detailed description of the offense from the basic information. Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision[,]” and encompasses the doctrine of common-law privacy. Gov’t Code § 552.101. Common-law privacy 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. See *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 satisfied. See *id.* at 681-82. The types of information considered intimate or 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. See *id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses to be excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information you have marked in the basic information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department must generally withhold the information you have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note the requestor is the spouse of the individual whose privacy interests are at issue. Thus, the requestor may be the authorized representative of that individual, and may have a right of access to information pertaining to that individual that would otherwise be confidential under common-law privacy. See Gov’t Code § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning

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<sup>2</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against the release of portions of this information.

himself). Thus, if the requestor is not acting as the authorized representative of the individual whose privacy interests are at issue, the department must withhold the marked information in the basic information under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as the authorized representative of the individual whose privacy interests are at issue, the department may not withhold the marked information from this requestor.

In summary, with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(2) of the Government Code. In releasing basic information, if the requestor is not acting as the authorized representative of the individual whose privacy interests are at issue, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining basic information must be released.

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 476411

Enc. Submitted documents

c: Requestor  
(w/o enclosures)