



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2013

Ms. Elizabeth L. White
Counsel for City of League City
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056

OR2013-11671

Dear Ms. White:

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# 492685 (City Ref. No. 2658; File No. 3607-1).

The City of League City (the "city"), which you represent, received a request for any and all documentation regarding a specified case number. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(b)(2) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(b)(2). Subsection 552.108(b)(2) protects internal law enforcement and prosecution records that relate to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. A governmental body claiming an exception under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt* 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to an investigation that concluded in a result

¹Although you raise section 552.023 of the Government Code, we note this is not an exception to disclosure under the Act. *See* Gov't Code § 552.023.

other than conviction or deferred adjudication. Therefore, we agree section 552.108(b)(2) is applicable to this information.

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). 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). We note basic information does not include information pertaining to witnesses. *See* Open Records Decision No. 127 at 3-4 (1976). Thus, with the exception of the basic front-page offense and arrest information, the city may withhold the submitted information under section 552.108(b)(2).

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 common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *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. Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public concern. Therefore, in releasing the basic information, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, which must be released, the city may withhold the submitted information under section 552.108(b)(2) of the Government Code. In releasing basic information, the city 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Britni Fabian". The signature is written in a cursive, flowing style.

Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 492685

Enc. Submitted documents

c: Requestor
(w/o enclosures)