



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2013

Ms. Teresa J. Brown
Senior Open Records Assistant
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2013-16603

Dear Ms. Brown:

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# 500352 (Plano ORR#BENS070913).

The Plano Police Department (the "department") received a request for any reports pertaining to a specified address at a specified time. You state you have released some information. 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 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 claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information at issue pertains to a closed investigation that did not result in conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to the information at issue.

We note, however, 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). See also Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(2).

You raise section 552.101 of the Government Code in conjunction with common-law and constitutional privacy for the basic information. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 of the Government Code encompasses the doctrines of common-law privacy and constitutional privacy. Common-law privacy 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has failed to demonstrate any of the remaining information you have marked is highly intimate or embarrassing information of no legitimate public concern. Therefore, no portion of the remaining information at issue may be withheld under section 552.101 of the Government Code on this basis.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. See Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the remaining information at issue, we find you have failed to demonstrate how any portion of the remaining information at issue falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the department may not withhold any of the remaining information at issue under section 552.101 on the basis of constitutional privacy.

In summary, with the exception of basic information, which must be released, 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 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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 500352

Enc. Submitted documents

c: Requestor
(w/o enclosures)