



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2014

Ms. Donna L. Johnson
Counsel for the City of Humble
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2014-15862

Dear Ms. Johnson:

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# 535639 (City of Humble Ref. No. COHM14-009).

The City of Humble (the "city") received a request for a specified police report. 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). You state the Humble Police Department has confirmed the submitted information relates to a criminal investigation that has concluded and did not result in conviction or deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is applicable to this information.

However, 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*, and includes the identity and description

of the complainant. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code.

We understand you to claim the basic information is excepted from disclosure under section 552.101 of the Government Code. 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. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy 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). In this instance, the submitted information pertains to a sex-related offense. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, in this instance, the requestor is an authorized representative of the first victim. Under section 552.023 of the Government Code, “a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023; *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Thus, the city may not withhold the identifying information of the first victim from the requestor. However, there is no indication the requestor has a right of access to the identifying information of the second victim. Accordingly, in releasing the basic information, the city must withhold the identifying information of the second victim, which we have marked, under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of the basic information, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code; however, in releasing the basic information, the city must withhold the identifying information of the second victim we have marked under section 552.101 in conjunction with common-law privacy.¹

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.

¹We note the requestor has a right of access to some of the information being released. *See* Gov’t Code § 552.023(a); ORD 481 (1987). Thus, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

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, appearing to read "J. Behnke", with a long horizontal stroke extending to the right.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 535639

Enc. Submitted documents

c: Requestor
(w/o enclosures)