



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 29, 2006

Ms. V. Melissa Saldaña
Assistant City Attorney
City of Laredo
Office of the City Attorney
P. O. Box 579
Laredo, Texas 78042-0579

OR2006-03106

Dear Ms. Saldaña:

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# 244992.

The City of Laredo (the "city") received a request for information pertaining to an investigation of thefts at the city's public library. You state that the city is providing some of the requested information to the requestor. We understand you to claim that the remaining 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.¹

With the exception of pages 1 and 4 of the case report, you seek to withhold the submitted information under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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. You inform us that the criminal case to which the information at issue pertains was declined for prosecution by the Webb County District Attorney. As such, we understand that this information relates

¹Although you also assert section 552.305 of the Government Code, we note that section 552.305 is not an exception to disclosure. Rather, section 552.305 is a procedural provision permitting a governmental body to decline to release information that may implicate a person's privacy or property interests for the purpose of requesting a decision from this office as provided under the Act. See Gov't Code § 552.305(a); Open Records Decision No. 542 at 1-3 (1990) (discussing statutory predecessor).

to a criminal case that concluded in a result other than conviction or deferred adjudication, and we therefore agree 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. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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), even if this information does not literally appear on the front page of an offense or arrest report. We note that the entirety of the submitted narratives cannot be withheld under section 552.108 because a detailed description of the offense is considered basic information. See *Houston Chronicle*, 531 S.W.2d at 187; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Further, we note that the description of the property involved in the case is also considered basic information that may not be withheld under section 552.108. See *id.* Thus, with the exception of the basic front page offense and arrest information, including a detailed description of the offense and the property involved, the city may withhold the information you seek to withhold under section 552.103(a)(2).

Next, you seek to withhold the Texas driver's license number that appears on page 1 of the case report.² Section 552.130 of the Government Code excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Therefore, the city must withhold the Texas driver's license number pursuant to section 552.130.³

You also seek to withhold the complainant's date of birth, age, home telephone number, and height that appear on page 1 of the case report.⁴ You believe that this information "is of a private nature[.]" In this regard, we understand you to claim that this information is protected under the doctrine of common-law privacy. Because common-law privacy is properly raised under section 552.101 of the Government Code, we address your privacy argument under this section.

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 doctrine of common-law 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

²We note that basic information described in *Houston Chronicle* does not include Texas motor vehicle record information. However, because you do not claim section 552.108 for this information, we raise section 552.130 of the Government Code for the Texas driver's license number that appears on page 1 of the case report.

³As we reach this conclusion, we need not address your arguments for withholding this information.

⁴Although you also seek to withhold the complainant's home address, we note that the information at issue does not include her home address.

concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. 540 S.W.2d at 683. This office has stated on several occasions that an individuals' home addresses and telephone numbers are generally not protected by common-law privacy under section 552.101. See Open Records Decision Nos. 554 at 3 (1990) (disclosure of a person's home address and telephone number is not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers do not qualify as "intimate aspects of human affairs"). Furthermore, we generally do not consider an individual's date of birth to be highly intimate or embarrassing information that is protected under common-law privacy. Therefore, upon review of your arguments and the information at issue, we conclude that none of this information is protected by common-law privacy and the city may therefore not withhold any of it under section 552.101.

In summary, with the exception of the basic front page offense and arrest information, including a detailed description of the offense and the property involved, the city may withhold the submitted information other than pages 1 and 4 of the case report under section 552.108(a)(2) of the Government Code. The Texas driver's license number must be withheld under section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll

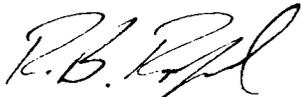
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 244992

Enc. Submitted documents

c: Ms. Becky Medellin
Reporter
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(w/o enclosures)