



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2009

Ms. YuShan Chang
Assistant City Attorneys
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2009-00873

Dear Ms. Chang:

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# 333008.

The Houston Police Department (the "department") received a request for five specified police reports. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted reports.

We will first address your arguments under section 552.108 of the Government Code as it is, potentially, the most encompassing exception you raise. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* 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); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted reports pertain to criminal investigations by the department that have been concluded and that did not result in conviction or deferred adjudication. Based on your representations, and our review, we find that section 552.108(a)(2) is generally applicable to these reports.

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). Such basic information includes, among other things, a detailed description of the offense and certain information about the arrestee. *See id.* at 186-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). In this instance, however, you contend that certain basic information in report number 018076808Y 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, which 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. We have marked the information in report number 018076808Y that is highly intimate and embarrassing and of no legitimate public interest. Accordingly, the department must withhold the information we have marked in report number 018076808Y from the basic information under section 552.101 of the Government Code in conjunction with common-law privacy. Although, you contend the arrestee's identity in report number 018076808Y is confidential under common-law privacy, we find that this information is not highly intimate or embarrassing and is of legitimate public interest. Thus, the arrestee's identifying information may not be withheld under common-law privacy.

Accordingly, with the exception of basic information, which must be released, the department may withhold the submitted reports under section 552.108(a)(2).¹ However, in releasing the basic information, the department must withhold the information we have marked in report number 018076808Y under section 552.101 of the Government Code in conjunction with common-law privacy. We note that you have the discretion to release all or part of the remaining information in these reports that is not otherwise confidential by law. Gov't Code § 552.007. As our ruling is dispositive, we need not address your remaining arguments against the disclosure of portions of the submitted information.

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 basic information includes an arrestee's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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, 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 at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script, appearing to read "Laura E. Ream".

Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 333008

Enc. Submitted documents

cc: Requestor
(w/o enclosures)