



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 9, 2009

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2009-03065

Dear Mr. Griffith:

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# 336924.

The McKinney Police Department (the "department"), which you represent, received a request for a specified incident 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 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release 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 (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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the victim, as well as the nature of the incident, the entire report must be withheld to protect the victim's privacy. Here, although you seek to withhold the submitted report in its entirety, you have not

demonstrated nor does the report reflect a situation in which the entire report must be withheld on the basis of common-law privacy. Accordingly, we will address your remaining argument against disclosure of the submitted information.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state the submitted information relates to an investigation that has been closed and no further action will be taken. You also state no charges were filed and, therefore, the investigation has concluded in a result other than conviction or deferred adjudication. Based on these representations, we agree 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 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). Basic information includes the offense charged and a detailed description of the offense. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

We note the offense listed and a portion of the narrative are protected by common-law privacy. As noted above, common-law privacy protects information that meets the two prong test as set out in *Industrial Foundation. Indus. Found.*, 540 S.W.2d at 685. Upon review, we find the information we have marked in the submitted information is both highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department generally must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

However, we note the request reflects the requestor is the spouse of the individual to whom the submitted information pertains. As such, the requestor may have a special right of access to the private information we have marked as the authorized representative of the individual to whom it pertains. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If the requestor is acting as her spouse's authorized representative, then she has a right of access to the information we have marked under section 552.023, and the department may not withhold this information from the requestor on privacy grounds under section 552.101. If the requestor is not acting as her spouse's authorized representative, then in releasing basic information, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

In summary, except for basic information, the department may withhold the submitted report under section 552.108(a)(2). In releasing basic information, if the department determines the requestor is her husband's authorized representative, then the department may not withhold the marked information from the requestor on privacy grounds under section 552.101. If the requestor is not acting as her spouse's authorized representative, then in releasing basic information, the department must withhold the information we have marked under section 552.101 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.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,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 336924

Enc. Submitted documents

c: Requestor
(w/o enclosures)