



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2009

Mr. Paul J. Stewart
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2009-05962

Dear Mr. Stewart:

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# 341824.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all complaints made to the sheriff pertaining to a specified address from 2006 to February 2009.¹ 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 representative sample of information.²

Section 552.108(a)(2) 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). Section 552.108(a)(2) is applicable only if the information at

¹The requestor has agreed to the redaction of social security numbers and driver's license numbers from the responsive information. Accordingly, any of this information within the submitted documents is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the sheriff is not required to release this information, which we have marked as non-responsive, in response to this request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.--San Antonio 1978, writ dismissed).

²We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* §§ 552.108(a)(2), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Incident Report No. 08-32274 and Call Slip No. A083580256 pertain to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on your representation, we agree that the information at issue is subject to section 552.108(a)(2).

We note that 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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, except for basic information, the sheriff may withhold Incident Report No. 08-32274 and Call Slip No. A083580256 under section 552.108(a)(2) of the Government Code.³

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.

Upon review, we find that Incident Report No. 08-15924 and Call Slip Nos. A081790610, A081790237, and A083310254 contain information that is highly intimate or embarrassing and not of legitimate concern to the public. We note that, although a pseudonym is used to refer to the subject in Call Slip No. A081790610, most of the information in Incident Report No. 08-15924 and Call Slip No. A081790610 contains the subject’s identifying information. Therefore, we have marked the information in Incident Report No. 08-15924 and Call Slip Nos. A081790610, A081790237, and A083310254 that constitutes highly intimate or embarrassing information of no legitimate public concern. Thus, the sheriff must withhold the information that we have marked under section 552.101 in conjunction with common-law privacy. We find, however, that you have failed to demonstrate how any of the remaining information constitutes highly intimate or embarrassing information, the release of which

³As our ruling is dispositive, we need not address your argument under section 552.108(b)(2) against disclosure of this information.

would be highly objectionable to a reasonable person and of no legitimate public concern. Thus, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

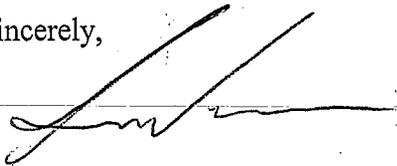
We note that portions of the submitted information are subject to section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.⁴ Gov't Code § 552.130(a)(1), (2). We have marked the Texas motor vehicle record information that the sheriff must withhold under section 552.130 of the Government Code.

In summary, with the exception of basic information, Incident Report No. 08-32274 and Call Slip No. A083580256 may be withheld under section 552.108(a)(2). The sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

⁴The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 341824

Enc. Submitted documents

c: Requestor
(w/o enclosures)