



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 8, 2009

Ms. Cheryl K. Byles  
Mr. Patrick C. Phillips  
Assistant City Attorneys  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2009-06169

Dear Ms. Byles and Mr. Phillips:

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# 342546 (Fort Worth Public Information Request Nos. 2183-09 and 2472-09).

The City of Fort Worth (the "city") received two requests from different requestors for information pertaining to a specified incident and incident report. You state the city has released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the second request is for the "dispatch callouts and any radio transmissions" pertaining to the specified report. Thus, any information contained in the submitted information that does not pertain to the specified dispatch records and radio transmissions, which we have marked, is not responsive to the second request for information. The city need not release nonresponsive information in response to this request and this ruling will not address that information.<sup>1</sup>

We note that the information you seek to withhold and Texas motor vehicle information have been redacted from the submitted documents. The city is authorized to redact only certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See Gov't Code § 552.301(a); Open*

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<sup>1</sup>As we are able to make this determination, we do not address your claim under section 552.101 of the Government Code in conjunction with common-law privacy for the submitted audio recording.

Records Decision No. 673 at 7-8 (2001). The city is not authorized, however, to redact the information you seek to withhold without requesting a decision. See Gov't Code § 552.301(a). As we are able, in this instance, to discern the nature of the information you have redacted without authorization, we will determine whether it is excepted from public disclosure. In the future, however, the city should refrain from redacting any information that it submits to this office in seeking an open records ruling. See *id.* §§ 552.301(e)(1)(D), .302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses the doctrine of common-law privacy. Common-law privacy 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 type of information considered intimate or 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. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find that the information we have marked in the submitted documents is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108 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). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(2) is applicable only if the information in question is related to a concluded case that did not result in a conviction or a deferred adjudication. You indicate that the submitted incident report is related to an investigation that concluded in a result other than conviction or deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is applicable to the submitted incident report.

However, we note 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 front-page 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). See 531 S.W.2d at 186-88. The

department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. See 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 incident report under section 552.108(a)(2) of the Government Code.

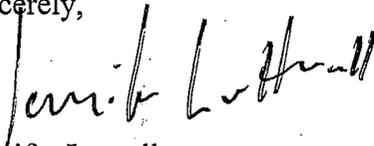
Finally, you claim that the submitted documents contain additional information subject to section 552.130 of the Government Code that is not covered by the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). Section 552.130 excepts from disclosure "information [that] relates to. . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. Accordingly, the city must withhold the Texas motor vehicle record information you have marked, and redacted without authorization, under section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the city may withhold the submitted incident report under section 552.108(a)(2) of the Government Code. The city must withhold the information you have marked under section 552.130 of the Government Code. The remaining responsive information must be released to the requestors.

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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

Ref: ID# 342546

Enc. Submitted documents

c: Requestor  
(w/o enclosures)