



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2009

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

OR2009-07981

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# 345556.

The Town of Flower Mound (the "town"), which you represent, received a request for two specified case reports. You claim that 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.

Initially, we note that report number 08-26321 was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-13975 (2008). In that decision we ruled that, with the exception of basic information, the town may withhold the submitted information under section 552.108(a)(2) of the Government Code. We further ruled that the town must withhold certain information within the basic information under section 552.101 of the Government Code in conjunction with common-law privacy. As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the town may continue to rely on that ruling as a previous determination and withhold or release report number 08-26321 in accordance with the prior ruling.¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous

¹As our ruling is dispositive of report number 08-26321, we need not address your arguments against its disclosure.

determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We will now address your arguments against disclosure of the remaining 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 that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the remaining information relates to a concluded investigation that did not result in conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to the remaining information.

However, we note that section 552.108 is limited by section 552.108(c), which provides that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Id.* § 552.108(c). Basic information refers to the information set forth 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 also* Open Records Decision No. 127 (1976) (summarizing types of information not excepted from disclosure by section 552.108 in *Houston Chronicle*). In Open Records Decision No. 649 at 3 (1996), this office concluded that information contained in a computer aided dispatch (“CAD”) report is substantially the same as basic information and is not excepted from public disclosure under section 552.108. *See also* Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in police dispatch records or radio logs and front page offense report information expressly held to be public in *Houston Chronicle*, and thus, such information is generally public). Because the remaining information consists of a CAD report, which constitutes basic information, it may not be withheld under section 552.108 of the Government Code.

Next, you argue that the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 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 that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonably 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. 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. However, upon review, we find the remaining information is not highly intimate or embarrassing; thus, it may not be withheld under section 552.101 on the basis of common-law privacy.

In summary, the town may continue to rely on Open Records Letter No. 2008-13975 (2008) as a previous determination and withhold or release report number 08-26321 in accordance with the prior ruling. 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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 345556

Enc. Submitted documents

c: Requestor
(w/o enclosures)