



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 4, 2009

Mr. C. Corey Fickes
Taylor, Olson, Adkins, Sralla, & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2009-12556

Dear Mr. Fickes:

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# 355800.

The City of Southlake (the "city"), which you represent, received a request for all reports involving the requestor over a specified time period. You claim that the submitted information is 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.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that incident report number 09SP039731 relates to an active criminal case in the city's police department. Based upon this representation and our review, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases). Therefore, section 552.108(a)(1) is applicable to incident report number 09SP039731.

You claim section 552.108(a)(2) of the Government Code for the remaining submitted information, consisting of incident report number 09SP013502 and call for service reports. This section excepts from disclosure information concerning a criminal 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 investigations by the city's police department that did not result in a conviction or deferred adjudication. Upon review, we agree that section 552.108(a)(2) is generally applicable to incident report number 09SP013502 and the call for service reports.

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 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; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). In Open Records Decision No. 649 (1996), this office concluded that information contained in a computer-assisted dispatch report is substantially the same as basic information and thus is not excepted from public disclosure under section 552.108. See ORD 649 at 3; see also Open Records Decision No. 394 at 3 (1983) (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*). In this instance, the submitted information includes call for service reports. Because the information in those reports is basic information, the call for service reports may not be withheld under section 552.108(a)(2) and must be released in their entirety unless they fall within another exception to disclosure. The city also must release basic information with respect to the other submitted reports, including detailed descriptions of the offenses, even if that information does not literally appear on the front page of the report. See ORD 127 at 3-4. The city may withhold the rest of the submitted information under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code.¹

You claim that a portion of the submitted call for service reports 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident*

¹As our ruling is dispositive for this information, we need not address your remaining argument against disclosure.

Bd., 540 S.W.2d 668, 685 (Tex. 1976). The type 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 individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the requestor knows the identity of the individual involved as well as the nature of the information in one of the call for service reports. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, the entire call for service report, which we have marked, is subject to common-law privacy, and must be withheld under section 552.101 of the Government Code on this basis.

In summary, with the exception of basic information, the city may withhold incident report number 09SP039731 under section 552.108(a)(1) and incident report number 09SP013502 under section 552.108(a)(2). From the call for service reports, the city must withhold one of the call for service reports we have marked under section 552.101 in conjunction with common-law privacy. 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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 355880

Enc. Submitted documents

c: Requestor
(w/o enclosures)