



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 4, 2009

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

OR2009-12563

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# 355493.

The McKinney Police Department (the "department"), which you represent, received a request for all records related to a specified address. 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.

Section 552.108(a)(2) of the Government Code excepts "[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). You state that the submitted information is related to a closed case that did not result in a conviction or a deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is generally applicable in this instance.

We note, however, 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 this instance, the submitted information consists of a computer-assisted dispatch ("CAD") report and a recording of the related 9-1-1 call. In Open Records Decision No. 649 (1996), this office concluded that

information contained in a CAD 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*). Therefore, because the information in the CAD report is basic information, that information may not be withheld under section 552.108(a)(2) of the Government Code. The remaining submitted information, consisting of the 9-1-1 call recording, may be withheld under 552.108(a)(2). However, we will address your argument under section 552.101 of the Government Code in conjunction with common-law privacy for the basic information.

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, 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 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 that 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. Although you seek to withhold the submitted CAD report in its entirety, you have not demonstrated, nor does it otherwise appear, that this is a situation where the entire report must be withheld on the basis of common-law privacy. Accordingly, the submitted CAD report may not be withheld in its entirety under common-law privacy. However, we agree this report contains information that is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We note that a portion of the remaining information in the submitted CAD report is subject to section 552.130 of the Government Code.¹ 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 department must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the department may withhold the 9-1-1 call recording under section 552.108(a)(2) of the Government Code. The department must withhold the information we have marked in the submitted CAD report under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. The remaining information must be released.

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# 355493

Enc. Submitted documents

c: Requestor
(w/o enclosures)