



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2009

Ms. Candice De La Garza
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 368
Houston, Texas 77001-0368

OR2009-16017

Dear Ms. De La Garza:

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# 361096.

The City of Houston (the "city") received a request for incident reports pertaining to a named individual and three specified addresses. 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.

Initially, we note that you have only submitted information pertaining to two of the three requested addresses. To the extent any information responsive to the named individual or the remaining address existed on the date the city received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), 302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

You assert that Exhibits 2 and 3 are excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See*

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. *See id.* §552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that Exhibits 2 and 3 relate to criminal investigations that did not result in conviction or deferred adjudication. Based on your representations and our review, we find that section 552.108(a)(2) is applicable in this instance.

However, 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). Basic information refers to the 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 city must release basic information, including a detailed description of the offense, even if the information does not 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 the basic front page offense and arrest information, the city may withhold Exhibits 2 and 3 from disclosure based on section 552.108(a)(2). However, we note that a portion of the basic information in Exhibit 2 is protected by common-law privacy.

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 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 Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. 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.

Upon review, we find that portions of the submitted information are highly intimate or embarrassing and of no legitimate public interest. Generally, only highly intimate or embarrassing information that implicates the privacy of an individual is withheld. In this instance, however, you copied the requestor on your brief to this office that reveals the nature of the private information at issue. Therefore, withholding only certain details of the incident from the requestor would not preserve the individual's common-law right to privacy. Accordingly, to protect the privacy of the individual to whom the information relates, we

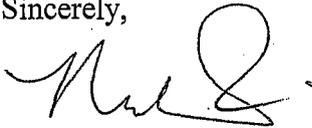
determine that the city must withhold this individual's identity from the submitted report.¹ Thus, the city must withhold the identifying information we have marked in the basic information in Exhibit 2 under section 552.101 of the Government Code in conjunction with common-law privacy.²

In summary, with the exception of basic information, the city may withhold Exhibits 2 and 3 under section 552.108(a)(2) of the Government Code. In releasing the basic information in Exhibit 2, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 361096

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹In the future, the city should redact such information from its brief before sending a copy to the requestor.

²As our ruling is dispositive, we need not address your remaining argument against disclosure.