



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2009

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

OR2009-17417

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# 363692.

The McKinney Police Department (the "department"), which you represent, received a request for information relating to a specified incident. You claim 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 of the Government Code provides as follows:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). Sections 552.108(a)(2) and 552.108(b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. *Id.* A governmental body claiming section 552.108(a)(2) or section 552.108(b)(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. *Id.*; see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you state that the submitted arrest report relates to a closed case in which no charges were filed. Based on your representations, we conclude that section 552.108(a)(2) is generally applicable to the submitted information.

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). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) and includes a detailed description of the offense. See also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). As you also raise section 552.101 of the Government Code, we will determine whether any of the basic information must be withheld under that exception.

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. 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). 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 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 also found that some kinds of medical information or information indicating disabilities or specific illnesses are confidential under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

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

However, we note that the requestor is the spouse of the individual to whom the marked information pertains. If the requestor is acting as her spouse's authorized representative, then she has a right of access to information pertaining to her spouse that would otherwise be confidential pursuant to section 552.023 of the Government Code. See Gov't Code § 552.023(a).¹ Accordingly, if the requestor has a right of access under section 552.023, then the marked information may not be withheld from her on privacy grounds. See Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Conversely, if the requestor does not have a right of access under section 552.023, then the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. If the requestor is not acting as the authorized representative of her spouse, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Otherwise, the department may not withhold the

¹Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

marked information from this requestor.² In either event, the rest of the basic 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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 363692

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note that basic information contains the arrestee's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. However, if the requestor is the authorized representative of her spouse, then she has a right of access to this information and it may not be withheld from her on the basis of common-law privacy. See Gov't Code § 552.023. We further note that because the requestor may have a special right of access to information that would otherwise be confidential in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.