



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 1, 2011

Mr. Peter G. Smith
City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2011-04500

Dear Mr. Smith:

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# 413241 (Richardson Reference No. 11-032).

The Richardson Police Department (the "department") received a request for police reports pertaining to a specified address and two named individuals during a specified time period. You claim 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)(2) of the Government Code 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 the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). You assert the submitted information pertains to a crime that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is generally applicable to the submitted information.

However, we note, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *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). See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note the submitted information includes computer-assisted dispatch (“CAD”) reports. In Open Records Decision No. 649 (1996), this office concluded information contained in a CAD report is substantially the same as basic information. See ORD 649 at 3; see also Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*; thus, such information is generally public). Therefore, except for the basic information, the department may withhold the submitted information under section 552.108(a)(2).¹

We understand you to claim the basic information is confidential pursuant to common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (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. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *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. This office has found some kinds of medical information or information indicating disabilities or specific illnesses to be excepted from required public disclosure under common-law privacy. See Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We find a portion of the basic information, which we marked, is highly intimate or embarrassing and of no legitimate public interest. In releasing basic information under section 552.108(c) of the Government Code, the department must generally withhold the marked information under section 552.101 in conjunction with common-law privacy. In this instance, however, the requestor may be an authorized representative of the individual to whom the marked information pertains. Section 552.023 of the Government Code provides “[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). As such, the requestor may have a right of access under section 552.023 to information that implicates that individual’s privacy interests. See *id.*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, if the requestor is that individual’s authorized representative, the marked information may not be withheld

¹As our ruling for this information is dispositive, we need not address your remaining arguments against its release.

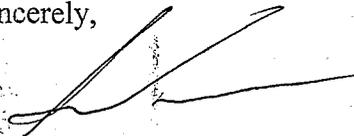
from this requestor under section 552.101 in conjunction with common-law privacy. If the requestor is not the individual's authorized representative, the department must withhold the information we marked from the basic information under section 552.101 in conjunction with common-law privacy. In either event, we find none of the remaining basic information is highly intimate or embarrassing; therefore, the department may not withhold the remaining basic information under section 552.101 in conjunction with common-law privacy.

In summary, except for basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. In releasing basic information, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy, unless the requestor has a right of access to the marked information under section 552.023 of the Government Code.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 413241

Enc. Submitted documents

c: Requestor
(w/o enclosures)