



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 6, 2011

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

OR2011-06250

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# 416625 (ORR # 10-3457).

The McKinney Police Department (the "department"), which you represent, received a request for information pertaining 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.

You claim the submitted event report is 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 concluded in a result other than 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 concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.302(e)(1)(A). You inform us that the submitted report pertains to a concluded criminal investigation in which no charges were filed and, therefore, did not result in conviction or deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is applicable to the submitted report.

Section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See id.* § 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 at 186-88 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam). See also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the submitted report under section 552.108(a)(2) of the Government Code.

We note basic information includes a detailed description of the offense. See ORD 127 at 3-4. In this instance, some of the basic information is excepted under section 552.101 of the Government Code. 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. This section encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. Upon review, we have marked the portions of the basic information that are highly intimate or embarrassing and of no legitimate public interest. In releasing basic information under section 552.108(c), 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 event report under section 552.108(a)(2) of the Government Code. In releasing basic information, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.¹

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

¹We note basic information includes an 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 under the Act. Gov’t Code § 552.147(b).

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,

A handwritten signature in black ink, appearing to read 'Bob Davis', written in a cursive style.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 416625

Enc. Submitted documents

c: Requestor
(w/o enclosures)