



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 12, 2011

Ms. Susan Fillion
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2011-09829

Dear Ms. Fillion:

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# 423679.

The Harris County Constable Precinct 5 (the "constable") received a request for two specified incident reports. You state some information has been released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted 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." Gov't Code § 552.101. This section encompasses the common-law right to 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. *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 met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated 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.

You seek to withhold the two submitted reports in their entirety on the basis of common-law privacy. We note report number 11-30207 reflects the requestor knows the identity of the individual involved as well as the nature of the information in this report. Therefore, withholding only the individual's identity or certain details of this incident from the requestor would not preserve the individual's common-law right of privacy. Accordingly, the constable must generally withhold report number 11-30207 in its entirety under section 552.101 in conjunction with common-law privacy. However, with regard to report number 11-46272, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entire report must be withheld on the basis of common-law privacy. Therefore, report number 11-46272 may not be withheld in its entirety under section 552.101 in conjunction with common-law privacy.

However, we note the requestor is the spouse of the individual to whom the reports at issue pertain, and may have a right of access to this information. *See* Gov't Code § 552.023(b) ("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"). Thus, if the requestor is not acting as her spouse's authorized representative, then the department must withhold report number 11-30207 under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is acting as her spouse's authorized representative, no portion of report number 11-30207 may be withheld from her on the basis of common-law privacy. In that case, we address your remaining arguments for report number 11-30207, along with your remaining arguments for report number 11-46272.

Section 552.108(a)(2) excepts from disclosure "[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 claiming section 552.108(a)(2) must demonstrate 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)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the two reports at issue did not result in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) applies to the information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, and includes a detailed description of the offense. *See* 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (summarizing types of information considered to be basic information), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records

Decision No. 127 (1976). Thus, with the exception of basic information, the constable may withhold the submitted information under section 552.108(a)(2) of the Government Code.¹

In summary, if the requestor is acting as her spouse's authorized representative, then with the exception of basic information, the constable may withhold the submitted information under section 552.108(a)(2). If the requestor is not acting as her spouse's authorized representative, then the constable (1) must withhold report number 11-30207 in its entirety under section 552.101 in conjunction with common-law privacy and (2) with the exception of basic information, may withhold report number 11-46272 under section 552.108(a)(2).

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/dls

Ref: ID #423679

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we do not address your remaining arguments against disclosure.