



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 15, 2013

Ms. Diana Davis  
Records Clerk  
Harker Heights Police Department  
402 Indian Trail  
Harker Heights, Texas 76548

OR2013-02652

Dear Ms. Davis:

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# 478918.

The City of Harker Heights (the "city") received two requests for information pertaining to a specified incident. You claim that 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(a)(2) of the Government Code 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.* § 552.301(e)(1)(A). You state the submitted information pertains to a concluded criminal case that did not result in a conviction or deferred adjudication. Based on your representation and our review, we conclude the city has demonstrated that section 552.108(a)(2) is 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." *Id.* § 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 Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes, among other items of information, a detailed description of the offense. See *Houston Chronicle*, 531 S.W.2d at 186-87; ORD 127 at 3-4. Thus, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code.

We understand the city to assert that the basic information 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 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. See *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. See *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. See *id.* at 683. Upon review, we find the information we have marked in the basic information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining basic information is not private and may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, except for the marked information which must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy, the city must release basic information in accordance with section 552.108(c). The city may withhold the rest of the submitted information under section 552.108(a)(2) 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](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,

A handwritten signature in black ink, appearing to read "Jeffrey W. Giles". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 478918

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)