



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 2, 2013

Ms. Linda Pemberton  
Office of the City Attorney  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540-1329

OR2013-05215

Dear Ms. Pemberton:

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# 482892 (PIR No. W009735).

The City of Killeen (the "city") received a request for police reports and calls for service for a specified address during a specified period of time. You state you have released some of the responsive information to the requestor. 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 552.101 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 established. *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. *Id.* at 683.

Generally, only highly intimate or embarrassing information implicating the privacy of an individual is withheld. However, in certain situations where the requestor knows the identity of the individual involved, as well as the nature of certain incidents, an entire report must be withheld to protect the individual's privacy. In this instance, the submitted information reveals the requestor knows the identity of the individual at issue and the circumstances surrounding the incident involved in call for service number 1376456 and report number 12-005747. Accordingly, we find call for service number 1376456 and report number 12-005747 must be withheld in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>1</sup> However, you have not demonstrated, and the submitted information does not reflect, a situation exists in which any of the remaining calls for service or reports must be withheld in their entirety to protect an individual's privacy interest.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us report number 12-010919 relates to a pending prosecution with the Bell County Attorney's Office (the "county attorney's office") and the county attorney's office objects to release of this information because release would interfere with the pending prosecution. In addition, you state report numbers 12-009218 and 12-016022 relate to criminal investigations the city's police department (the "department") has yet to complete. You state the release of this information would hinder the ability of detectives to conduct a thorough investigation. Based on these representations and our review, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, section 552.108(a)(1) is applicable to report numbers 12-010919, 12-009218, and 12-016022.

Section 552.108(a)(2) of the Government Code 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). This section is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. As noted above, a governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is

---

<sup>1</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706. You inform us report numbers 12-009863 and 12-013793 and the remaining calls for service relate to concluded criminal investigations conducted by the department. You state the department does not anticipate filing any charges in these cases in the future and the cases did not result in conviction or deferred adjudication. Based on your representations and our review, we conclude section 552.108(a)(2) is applicable to report numbers 12-009863 and 12-013793 and the remaining calls for service.

However, as you acknowledge, 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 offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; 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, some of which you state you have released, the city may withhold report numbers 12-010919, 12-009218, and 12-016022 under section 552.108(a)(1) of the Government Code, and report numbers 12-009863 and 12-013793 and the remaining calls for service under section 552.108(a)(2) of the Government Code.

As previously noted, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure 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). Upon review, we find the information we have marked in the basic information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city has failed to demonstrate any of the remaining information is highly intimate or embarrassing and a matter of no legitimate public interest. Therefore, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold call for service number 1376456 and report number 12-005747 in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the city may withhold report numbers 12-010919, 12-009218, and 12-016022 under section 552.108(a)(1) of the Government Code, and report numbers 12-009863 and 12-013793 and the remaining calls for service under section 552.108(a)(2) of the Government Code. In releasing basic

information, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</sup>

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,



Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

Ref: ID# 482892

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>2</sup>We note, although 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).