



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2013

Ms. Evelyn Njuguna
Staff Attorney
City of Houston Police Department
1200 Travis
Houston, Texas 77002-6000

OR2013-05745

Dear Ms. Njuguna:

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# 486865 (Houston OR# 13-1136).

The Houston Police Department (the "department") received a request for three specified reports and any reports associated with a specified address that involved a named individual. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have only submitted two of the specified reports. Therefore, to the extent information responsive to the remainder of the request existed at the time the department received the request for information, we assume you have released it to the requestor. If you have not released any such information, you must do so at this time. *See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible under circumstances).*

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.* §§ 552.108(a)(2), .301(e)(1)(A). You state Exhibits 2 and 3 pertain to concluded criminal investigations that did not result in convictions or deferred adjudications. Based on your representations and our review, we conclude section 552.108(a)(2) is applicable to the information at issue.

We note, 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 also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold Exhibits 2 and 3 under section 552.108(a)(2) of the Government Code.

We note basic information includes the identity of the complainant. In this instance, Exhibit 2 is related to an alleged sexual offense, and the complainant is also the alleged sexual assault victim. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ Gov’t Code § 552.101. Section 552.101 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. *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. *Id.* at 681–82. This office has concluded common-law privacy protects information that either identifies or tends to identify a victim of a sexual assault or other sex-related offense. *See* Open Records Decision Nos. 393 (1983), 339 (1982). Therefore, in releasing basic information for Exhibit 2, the department must withhold the information we have marked that identifies the complainant under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, the department may withhold Exhibits 2 and 3 under section 552.108(a)(2) of the Government Code. When releasing basic information for Exhibit 2, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/tch

Ref: ID# 486865

Enc. Submitted documents

c: Requestor
(w/o enclosures)