



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2013

Mr. Gary Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2013-08722

Dear Mr. Scott:

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# 488284.

The City of Conroe (the "city") received a request for all incident reports for Aspire Behavioral Hospital for the past year. You state you have release some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that incident numbers 12101974, 13010307, and 12112178 pertain to active and pending criminal cases. Based upon your representation and our review, we conclude that the 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 n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to incident numbers 12101974, 13010307, and 12112178.

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). A governmental body claiming section 552.108(a)(2) must demonstrate that 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 inform us incident report numbers 12073115 and 12113268 pertain to “cases that have been concluded.” You further state “the conclusions are of a result other than conviction or deferred adjudication.” Therefore, section 552.108(a)(2) of the Government Code is applicable to incident report numbers 12073115 and 12113268. We understand you to state incident report number 12013469 is inactive. However, you do not inform us this case has concluded. Therefore, we find you have failed to demonstrate how incident report number 12013469 relates to a concluded investigation or prosecution that did not result in conviction or deferred adjudication. Accordingly, no part of incident report number 12013469 may be withheld under section 552.108(a)(2) of the Government Code.

We note, 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). 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 the types of information considered to be basic information). We note basic information includes, among other things, a detailed description of the offense and the identification and description of the complainant, but does not include the social security number or home contact information of the complainant. *See id.* Thus, with the exception of basic information, the city may withhold incident report numbers 12101974, 13010307, and 12112178 under section 552.108(a)(1) and incident report numbers 12073115 and 12113268 under section 552.108(a)(2).

You claim some of the basic information is confidential under section 552.101 of the Government Code. 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 of the Government Code encompasses the doctrine of 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. *See* 540 S.W.2d 668, 683. 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). In this instance, incident report numbers 12112178 and 12113268 relate to alleged sexual assaults, and the complainants are also the alleged sexual assault victims. Therefore, in releasing basic information from incident report numbers 12112178 and 12113268 the city must withhold the information we have marked that identifies the complainants under section 552.101 of the Government Code in conjunction with common-law privacy. Furthermore, in releasing basic information from incident report number 12073115, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Upon review, we find the city must withhold the driver's license information we have marked in the remaining information under section 552.130 of the Government Code.

In summary, with the exception of basic information, the city may withhold incident report numbers 12101974, 13010307, and 12112178 under section 552.108(a)(1) of the Government Code, and incident report numbers 12073115 and 12113268 under section 552.108(a)(2) of the Government Code. In releasing basic information from incident report numbers 12112178, 12073115, and 12113268, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.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

¹We note the remaining information contains social security numbers. 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).

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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/akg

Ref: ID# 488284

Enc. Submitted documents

c: Requestor
(w/o enclosures)