



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2014

Mr. Steven Meyer
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2014-01611

Dear Mr. Meyer:

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# 512137 (APD Ref. No. 13292-102513).

The Arlington Police Department (the "department") received a request for reports pertaining to family violence and custody interference relating to three named individuals and the requestor from a specified time period, including several specific reports. You indicate you have released some 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 552.108(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 claiming section 552.108 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 the submitted information pertaining to report numbers 13-56487 and 09-47871 relates to pending and open criminal cases. Based on your representation, we conclude the release of information pertaining to report number 13-56487 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). Therefore, section 552.108(a)(1) is applicable to the information pertaining to report number 13-56487.

However, we note report number 09-47871 involves an allegation of misdemeanor assault that occurred in 2009. *See* Penal Code § 22.01(b) (offense under subsection 22.01(a)(1) is Class A misdemeanor). The statute of limitations for a misdemeanor is two years from the date of the offense. *See* Crim. Proc. Code art. 12.02. More than two years have elapsed since the events giving rise to the investigation in report number 09-47871. The report itself reflects the case was closed, and you have not informed this office any criminal charges were filed within the limitations periods for this offense. Thus, we find you have not demonstrated release of report number 09-47871 would interfere with the detection, investigation, or prosecution of crime. Therefore, the department may not withhold report number 09-47871 under section 552.108(a)(1) of the Government Code.

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*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold the information pertaining to report number 13-56487 under section 552.108(a)(1) of the Government Code.

Next, we understand you to assert the remaining basic information from report number 13-56487 and the entirety of report number 09-47871 is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 of the Government Code excepts "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 is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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.

Upon review, you have not demonstrated, nor does it otherwise appear, this is a situation in which the information at issue must be withheld in its entirety on the basis of common-law privacy. However, we find the information we have marked in report number 09-47871 satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The department has failed to demonstrate, however, how any of the remaining basic information in report number 13-56487 or any of the remaining information in report number 09-47871 is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, none of this information may be withheld under section 552.101 in conjunction with common-law privacy.

We note some of the remaining information in report number 09-47871 is subject to section 552.130 of the Government Code.¹ Section 552.130 of the Government Code exempts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Upon review, we find the department must withhold the driver's license information we have marked in report number 09-47871 under section 552.130 of the Government Code.²

In summary, except for basic information, the department may withhold the information pertaining to report number 13-56487 under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked in report number 09-47871 under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. The remaining information must be released to the requestor.

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.texasattorneygeneral.gov/open/>

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Shipp". The signature is written in a cursive, flowing style.

Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/ag

Ref: ID# 512137

Enc. Submitted documents

c: Requestor
(w/o enclosures)