



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 4, 2014

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

OR2014-02130

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# 513171 (Killeen ID# W011956).

The Killeen Police Department (the "department") received a request for information pertaining to a specified incident report. 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 if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information 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. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

Generally, only highly intimate information that implicates an individual's privacy is withheld. However, in certain circumstances, where it is demonstrated that 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 privacy of the individual. In this instance, the submitted information reveals that the requestor knows the identity of the individual involved as well as the nature of the incident in the report at issue. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the individual's common-law right of privacy. We note, however, the requestor is the spouse of the individual to whom the information subject to common-law privacy pertains and, therefore, may have a right of access to this information. *See* Gov't Code § 552.023(a) ("person or person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"). Thus, if the requestor is acting as the authorized representative of his spouse, then he has a right of access to the information pertaining to his spouse pursuant to section 552.023, and this information may not be withheld from him under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of his spouse, then the department must withhold the submitted report in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

To the extent the requestor is acting as his spouse's authorized representative, we address your remaining argument against disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate 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) (governmental body must provide written comments explaining why exceptions raised apply to information requested). You state the submitted information relates to a concluded investigation that did not result in conviction or deferred adjudication. Based on your representations, we find section 552.108(a)(2) is applicable to the submitted information.

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 Publ'g 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*). Thus, with the exception of basic information, which must be released, the department may withhold the submitted information pursuant to section 552.108(a)(2) of the Government Code.

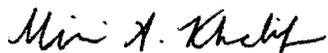
In summary, if the requestor is not acting as the authorized representative of his spouse, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting

as the authorized representative of his spouse, then, with the exception of basic information, which must be released, the department may withhold the submitted information pursuant to 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.texasattorneygeneral.gov/open/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,



Miriam A. Khalifa
Assistant Attorney General
Open Records Division

MAK/akg

Ref: ID# 513171

Enc. Submitted documents

c: Requestor
(w/o enclosures)