ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 25, 2014

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
401 Jackson Street, Third Floor
Richmond, Texas 77469

OR2014-12970

Dear Ms. Rangel:

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# 531172.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for incident report numbers 08-9570 and 09-12139. You state the sheriff's office will release incident report number 08-9570. You claim incident report number 09-12139 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 representative sample of information.[1]

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning a criminal investigation that did not result in 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.* § 552.301(e)(1)(A)

[1]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(governmental body must provide comments explaining why exceptions raised should apply to information requested). You state incident report number 09-12139 pertains to a criminal case that was dismissed and therefore did not result in conviction or deferred adjudication. Based on your representation and our review, we find that section 552.108(a)(2) is generally applicable incident report number 09-12139.

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). S*ee* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(2).

You claim some of the basic information is confidential under section 552.101 of the Government Code in conjunction with common-law privacy.[2] Section 552.101 encompasses the common-law right to 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 met. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683.

This office has concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). In this instance, the complainant is also the sexual assault victim. We find the complainant's identifying information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation.* Accordingly, the sheriff's office must withhold the complainant's identifying information, which we have marked, from the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code. In releasing basic information, the sheriff's office must withhold the complainant's identifying

---

[2]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.

information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.[3]

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,

Tamara H. Holland

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ac

Ref: ID# 531172

Enc. Submitted documents

c: Requestor
(w/o enclosures)

[3]As our ruling is dispositive, we need not address your remaining arguments.