



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2014

Ms. Natalie R. Broaddus
Assistant District Attorney
Brazoria County
111 E. Locust, Ste. 408A
Angleton, Texas 77515

OR2014-14686

Dear Ms. Broaddus:

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# 534444.

The Brazoria County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified incident involving the requestor's client. 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)(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 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 state the submitted information pertains to an investigation that concluded in a result other than conviction or deferred adjudication. Based on this representation and our review, we find section 552.108(a)(2) of the Government Code is applicable to the submitted information.

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* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the district attorney's office may withhold the submitted information pursuant to section 552.108(a)(2) of the Government Code.¹

We understand you to assert some of the basic information is subject to common-law privacy. 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 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 established. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, however, we find that while the basic information contains information that would ordinarily be protected by common-law privacy, the requestor is the representative of the individual whose privacy interests are at issue. Accordingly, the requestor has a special right of access under section 552.023 of the Government Code to this information. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information excepted from public disclosure under laws intended to protect person's privacy interests); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Therefore, the district attorney's office may not withhold any of the basic information from this requestor under section 552.101 of the Government Code on the basis of common-law privacy.

In summary, with the exception of basic information, the district attorney's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.²

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.

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

²As noted above, the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a). Therefore, if the district attorney's office receives another request for the same information from a different requestor, the district attorney's office must again seek a decision from this office.

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# 534444

Enc. Submitted documents

c: Requestor
(w/o enclosures)