



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 14, 2014

Ms. S. McClellan  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2014-18378

Dear Ms. McClellan:

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# 539245 (DPD Request No. 2014-5802).

The Dallas Police Department (the “department”) received a request for the offense report, arrest report, 9-1-1 call sheet and audio tapes, and accident photographs related to a specified murder investigation. You claim the requested information is exempt from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.108(a)(2) of the Government Code exempts 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

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<sup>1</sup>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.

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 comments explaining why exceptions raised should apply to information requested). You state the submitted information pertains to a closed criminal investigation that did not result in conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the submitted information.

We note, and you acknowledge, 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 also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). We note basic information includes, among other items, the details of the arrest, a detailed description of the offense, and the name, age, address, race, sex, physical description, and social security number of the arrested person. *See* ORD 127 at 3-4. In this instance, you have indicated most of the narrative portion of the submitted report as information you seek to withhold under section 552.108. The remaining information does not contain information sufficient to satisfy the requirement that a “detailed description of the offense,” and certain information regarding the arrested person be released as basic information. *See id.* Accordingly, we determine the department may not withhold basic information under section 552.108, including, a sufficient portion of the narrative to encompass a detailed description of the offense, and the name, age, address, race, sex, physical description, and social security number of the arrested person. Thus, with the exception of the basic front page offense information, the department may withhold the requested information under section 552.108(a)(2) 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. For many years, this office determined section 552.101, in conjunction with the common-law right to privacy, protected information from disclosure when “special circumstances” exist in which the disclosure of information would place an individual in imminent danger of physical harm. *See, e.g.,* Open Records Decision Nos. 169 (1977) (special circumstances required to protect information must be more than mere desire for privacy or generalized fear of harassment or retribution), 123 (1976) (information protected by common-law right of privacy if disclosure presents tangible physical danger). However, the Texas Supreme Court has held freedom from physical harm does not fall under the common-law right to privacy. *Tex. Dep’t of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112 (Tex. 2011) (holding “freedom from physical harm is an independent interest protected under law, untethered to the right of privacy”). Instead, in *Cox*, the court recognized, for the first time, a separate common-law physical safety exception to required disclosure that exists independent of the common-law right to

privacy. *Id.* at 118. Pursuant to this common-law physical safety exception, “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm.” *Id.* In applying this new standard, the court noted “deference must be afforded” law enforcement experts regarding the probability of harm, but further cautioned, “vague assertions of risk will not carry the day.” *Id.* at 119.

You argue the disclosure of basic information might cause the arrestee to face an imminent threat of physical danger because the complainants’ families might retaliate. Upon review, however, we conclude you have not demonstrated that release of the responsive basic information would subject the individual at issue to a specific risk of harm. Accordingly, the department may not withhold the responsive basic information under section 552.101 in conjunction with the common-law physical safety exception.

In summary, with the exception of the basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.<sup>2</sup>

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](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,



Rustam Abedinzadeh  
Assistant Attorney General  
Open Records Division

RA/dls

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<sup>2</sup>We note the basic information includes the arrestee’s social security number. 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.

Ref: ID# 539245

Enc. Submitted documents

c: Requestor  
(w/o enclosures)