



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 27, 2015

Mr. Matthew L. Grove
Assistant County Attorney
County of Fort Bend
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2015-10260

Dear Mr. Grove:

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# 571074.

The Fort Bend County Sheriff's Office (the "sheriff's office") received two requests from the same requestor for information pertaining to two specified incidents. 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 representative sample of information.¹

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: (1) 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(a)(1) must reasonably explain how and why the release of the information at issue 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, 710 (Tex. 1977).

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

You inform us report number 15-11185 relates to a pending criminal investigation. Based on this representation, we conclude the release of this information 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we agree section 552.108(a)(1) is applicable to this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. See *id.* §§ 552.108(a)(2), .301(e)(1)(A). You state report number 15-3946 pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this 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*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff's office may withhold report number 15-11185 under section 552.108(a)(1) of the Government Code and report number 15-3946 under section 552.108(a)(2) of the Government Code.

You claim the basic information in report number 15-3946 is subject to the doctrine of common-law privacy, which is encompassed by section 552.101.² Common-law privacy protects information that (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 satisfied. *Id.* at 681-82. Types of information considered highly intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find the sheriff's office would normally have to withhold some of the basic information under common-law privacy. However, the requestor is the individual with the privacy interest. As such, the requestor has a special right of access to information that would ordinarily be withheld to protect her common-law privacy, and such information cannot be withheld from her on that basis. See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Accordingly, the sheriff's

²Section 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.

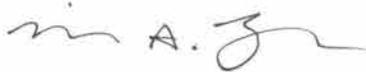
office may not withhold any of the basic information in report number 15-3496 pursuant to section 552.101 of the Government Code on the basis of common-law privacy.

In summary, with the exception of basic information, which must be released, the sheriff's office may withhold report number 15-11185 under section 552.108(a)(1) of the Government Code and report number 15-3946 under section 552.108(a)(2) of the Government Code.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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/cbz

Ref: ID# 571074

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As noted above, the requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the sheriff's office receives another request for this information from a different requestor, the sheriff's office must again seek a ruling from this office.