



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 3, 2017

Mr. Peter G. Smith
City Attorney
City of Richardson
P. O. Box 831078
Richardson, Texas 75083-1078

OR2017-04638

Dear Mr. Smith:

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# 654101 (Richardson File # 10-090).

The City of Richardson (the "city") received a request for a specified report. You state the city released some information. You claim the submitted information 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 information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an 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 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 criminal investigation that concluded in a result other than conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) 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 basic "front-page" offense and arrest 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 considered to be basic information). We note basic information does not include motor vehicle record information protected by section 552.130 of the Government Code. See ORD 127 at 3-4. Thus, with the exception of the basic information, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code.

The city claims the basic information is subject to the doctrine of 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. This section encompasses the doctrine of common-law privacy, which 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 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual's privacy.

We note the requestor is the spouse of the individual whose privacy rights would be implicated in the basic information and he is acting as her authorized representative. Section 552.023 of the Government Code (a) states "a person . . . 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." Gov't Code § 552.023; see Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, the requestor has a right of access to the private information of his spouse pursuant to section 552.023, and the city may not withhold information pertaining to this person from him under section 552.101 on the basis of common-law privacy. Further, we find the city failed to demonstrate any of the basic information that does not pertain to the requestor's spouse is confidential under common-law privacy. Therefore, the city may not withhold any portion of the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

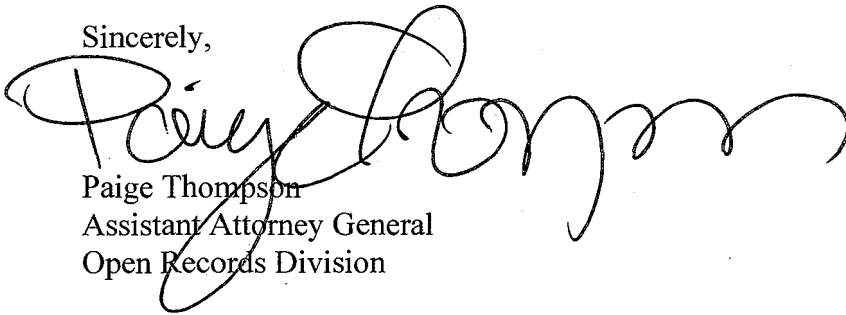
In summary, with the exception of the basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code.¹

¹Because the requestor has a right of access beyond that of the general public to some of the information being released, the city must again seek a ruling from this office if it receives another request for this information from an individual other than this requestor or his spouse. See Gov't Code § 552.023(a); ORD 481 at 4.

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,

A handwritten signature in black ink, appearing to read "Paige Thompson", written in a cursive style. The signature is positioned above the typed name and title.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 654101

Enc. Submitted documents

c: Requestor
(w/o enclosures)