



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2017

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

OR2017-09731

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# 656474.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for a specified report. 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 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 requested information relates to a criminal investigation that has 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 concerns a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the submitted information.

However, we note 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, a detailed description of the offense. *See* ORD 127 at 3-4. Thus, 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.

You assert the basic information is confidential in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts "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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

Upon review, we find you have not demonstrated, nor does it otherwise appear, this is a situation in which the basic information must be withheld in its entirety on the basis of common-law privacy. Accordingly, the sheriff's office may not withhold the entirety of the basic information under section 552.101 of the Government Code on that basis. Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the information we marked must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, the sheriff's office has failed to demonstrate the remaining basic information is highly intimate or embarrassing and of no legitimate public interest. Thus, the remaining basic information may not be withheld 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 sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code. In releasing the basic information, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/tdw

Ref: ID# 656474

Enc. Submitted documents

c: Requestor
(w/o enclosures)