



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 12, 2017

Mr. William T. Little
Assistant County and District Attorney
Ellis County
109 South Jackson
Waxahachie, Texas 75165

OR2017-15508

Dear Mr. Little:

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# 665948.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for two specified incident reports. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ 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. 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); Open Records Decision No. 434 (1986). The sheriff's office states the submitted information relates to a closed criminal investigation that did not result in conviction or

¹Although you also raise section 552.101 in conjunction with section 261.201 of the Family Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

deferred adjudication. Based on this representation, 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. Gov't Code § 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes the offense and a detailed description of the offense. See ORD 127 at 3-4. With the exception of basic information, the submitted information may be withheld under section 552.108(a)(2) of the Government Code.

We will address your argument under section 552.101 of the Government Code in conjunction with common-law privacy for the basic information. Section 552.101 of the Government Code excepts from public 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 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 some of the basic information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the submitted information reveals the requestor is the spouse of the individual whose information is at issue, and may be acting as the individual's authorized representative. As such, the requestor may have a right of access to her husband's confidential information under section 552.023 of the Government Code. See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); see also Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the requestor is acting as the authorized representative of her spouse, she has a right of access to his confidential information pursuant to section 552.023(a), and it may not be withheld from her under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is not acting as the authorized representative of her spouse, the sheriff's office must withhold the basic information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. In either case, we find none of the remaining basic

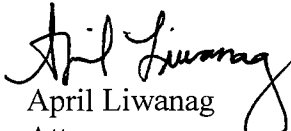
information is highly intimate or embarrassing and of no legitimate public concern, and the sheriff's office may not withhold any of the remaining basic information under section 552.101 of the Government Code on the basis of common-law privacy.

In summary, 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. If the requestor is not acting as the authorized representative of the individual whose information is at issue, the sheriff's office must withhold the basic information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must release the remaining basic information.

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,


April Liwanag
Attorney
Open Records Division

AML/eb

Ref: ID# 665948

Enc. Submitted documents

c: Requestor
(w/o enclosures)