



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 18, 1995

Ms. Deborah Stolarski
Assistant City Attorney
City of Texarkana
P.O. Box 1967
Texarkana, Texas 75504

OR95-1442

Dear Ms. Stolarski:

Your predecessor, Susan Bleil, asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned the request ID# 28513.

The City of Texarkana (the "city") has received a request for certain information in the possession of its police department. Specifically, the requestor seeks "copies of all records . . . relating to dispatches to or complaints about the address 6205 Stoneridge, Texarkana, Texas;" "copies of all records . . . regarding unit dispatches or complaints about Dennis Micheal Blankenship or Michael Lee Blankenship or Dennis Blankenship or Michael Blankenship with the DOB of 03/13/51 and the SSN# 501-75-4891;" and "slick glossy quality reproductions of photographic evidence relating to the assault on Anthony El Bocha at 6205 Stoneridge on 05/05/88." You advise us that the city has made some of the requested information available to the requestor. You have submitted the requested photographs to us for review, however, and claim that sections 552.101 and 552.108 of the Government Code except them from required public disclosure.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with the privacy interests of third parties. Under *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public.

We have examined the photographs submitted to us for review. Some of the photographs depict the victim of an assault immediately subsequent to the assault. Other photographs depict the crime scene. Ordinarily, the identity of the victim of an assault, or

a more serious crime, is not intimate or embarrassing. *See* Open Records Decision No. 438 (1986) at 4. Moreover, the nature of a person's injuries do not usually rise to the level of intimate or embarrassing. *See generally* Open Records Decision No. 370 (1983).

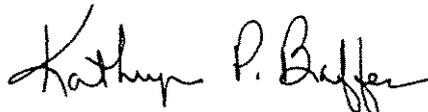
After reviewing the requested photographs this office has determined that they are not so "highly intimate or embarrassing" so as to sustain a common-law tort action for invasion of privacy. Accordingly, we conclude that the city may not withhold these records under section 552.101.

We now address the applicability of section 552.108. When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally 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); Open Records Decision No. 127 (1976) at 3-4. Once a case is closed, however, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." *See* Open Records Decision No. 553 (1990) at 4 (and cases cited therein). Moreover, the agency claiming an exception under 552.108 must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would unduly interfere with law enforcement. *See* Open Records Decision No. 434 (1986) at 3.

You advise us that the case to which the photographs relate is closed and that no further action is anticipated. You do not explain how release of the photographs would unduly interfere with law enforcement or crime prevention, nor is the explanation apparent on their face. We conclude that, in this instance, you have failed to demonstrate the applicability of section 552.108. Accordingly, the city must release the requested photographs.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

Ref.: ID# 28513

Enclosures: Submitted photographs

cc: Ms. Tammy Whitten
Office Manager/
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P.O. Box 388
Sulphur Springs, Texas 75482
(w/o enclosures)

