



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 22, 1995

Mr. John Steiner
Division Chief
City of Austin
Department of Law
P.O. Box 1088
Austin, Texas 78767-1088

OR95-1596

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31681.

The City of Austin (the "city") received an open records request from a representative of the Texas Rehabilitation Commission for copies of "the offense report (page one information) and of the statements provided by the complainant and the alleged suspect" in a police investigation of an alleged sexual assault.¹ You explain that the city police department's investigation of this matter has ended and that the city does not anticipate bringing charges against the suspect at this time. You indicate that because the statute of limitations for the alleged offense has not yet run and the complainant may subsequently decide to cooperate in the investigation and prosecution of this matter, the city may withhold the requested information at this time pursuant to section 552.108 of the Government Code. You also contend that due to the sensitive nature of the information at issue, the city must withhold the requested records pursuant to section 552.101.

¹Because the requestor specifically seeks only these particular records, we do not address in this letter ruling the extent to which any other records contained in the police department file are subject to required public disclosure.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. In this instance, however, the requestor has provided this office with waivers from both the complainant and alleged assailant authorizing the release of their respective statements. Because neither of the parties involved object to the release of these records, this office finds no basis to withhold the records from this particular requestor² under common-law privacy.

Section 552.108 of the Government Code, known as the "law enforcement" exception, excepts from required public disclosure:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement

Gov't Code § 552.108. Traditionally, when applying section 552.108, our office has distinguished between 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, this section excepts from disclosure all information except that generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976) (citing *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)). However, once a case is closed, information generally may be withheld under section 552.108 only if the law enforcement agency demonstrates or the information demonstrates on its face that its release "will unduly interfere with law enforcement and prevention." *See* Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 434 (1986), 366 (1983) at 3, 216 (1978) at 3 (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. Open Records Decision Nos. 434 (1986) at 2, 287 (1981) at 1-2.

²The complainant and her alleged assailant have specified only that they have waived their privacy rights with regard to the Texas Rehabilitation Commission. We do not interpret this waiver as one with regard to the general public.

You state that the investigation has been "exceptionally cleared" and explain:

That clearance means that the suspect has been identified and located, but prosecution has not been pursued. In this case, the report reflects that prosecution has not been pursued due to the desires of the complainant. As the report reflects, the suspect was notified that the statute of limitations is five years, and prosecution could be pursued until that limit expired.

After reviewing the records of the police investigation, we conclude that you have demonstrated that release of the requested information could unduly interfere with law enforcement if the complainant were to ultimately decide to pursue the prosecution of this case. We believe that the alleged offense is still recent enough to conclude that such a possibility is not unreasonable at this time. Accordingly, except for the front page offense report information, which must be released in its entirety pursuant to *Houston Chronicle Publishing Co.*, the police department may withhold the requested case file under the Open Records Act³ pursuant to section 552.108 of the Government Code.

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 should 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,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/RWP/rho

Ref.: ID# 31681

Enclosures: Submitted documents

³We note, however, that because the requestor is the official representative of a state agency, the city has the discretion to release the information to the requestor through an inter-governmental transfer. See, e.g., Open Records Decision No. 183 (1978) at 5. Such transfer of the information would not result in the city's waiver of its section 552.108 interests. *Id.*

cc: Mr. W. Frank Coggins
Manager, Investigations & Ethics
Texas Rehabilitation Commission
4900 North Lamar Boulevard
Austin, Texas 78751-2399
(w/o enclosures)