



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 21, 1998

Ms. Katheryn Heather West
Assistant City Attorney
Criminal Law and Police Division
1500 Marilla
Dallas, Texas

OR98-2264

Dear Ms. West :

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# 118124.

The Dallas Police Department (the "department") received an open records request for three offense reports. You state that the department has released to the requestor two of those reports. You seek to withhold the third report, which concerns an alleged sexual assault, in its entirety pursuant to sections 552.101 and 552.108 of the Government Code.¹

Section 552.108 of the Government Code, as amended by the Seventy-fifth Legislature, excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

¹In the future, the department should submit copies of the documents at issue without redactions.

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(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 or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

You contend that the release of the offense report “seriously undermines and interferes with current criminal investigations because aspects of those investigations would become public information and therefore, suspects would be informed of the type of evidence possessed by law enforcement personnel.” You have not, however, identified the pending criminal investigations that would be hampered by the release of the requested offense report or precisely what aspects of those cases are implicated by the records at issue here. Nor have you informed this office whether the criminal investigation that is the subject matter of the requested offense report is either pending or has been closed without a resulting conviction or deferred adjudication, so as to implicate section 552.108(a)(1) or 552.108(a)(2), respectively. We therefore conclude that you have not met your burden of

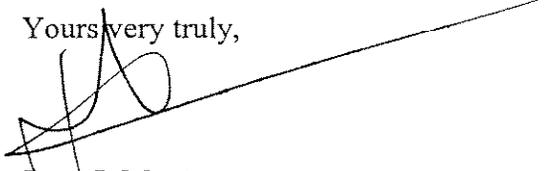
demonstrating the applicability of section 552.108 to the requested records. The department may not withhold any of the requested information on these grounds.

We agree, however, that some of the information at issue must be withheld from public disclosure pursuant to section 552.101 of the Government Code. Section 552.101 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.

Clearly, information pertaining to an incident of sexual assault raises an issue of common-law privacy. Open Records Decision No. 339 (1982). In Open Records Decision No. 339, this office concluded that "a detailed description of an incident of aggravated sexual abuse raises an issue of common-law privacy" and therefore any information tending to identify the assault victim should be withheld pursuant to common-law privacy. *See also* Open Records Decision No. 393 (1983). We have marked the information that must be withheld from the general public to protect the victim's identity.² The remaining information must be released to the requestor.

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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/RWP/nc

Ref.: 118124

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other substantially different types of information.

Enclosures: Marked documents

cc: L.E. Jack Driscoll
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(w/o enclosures)