

January 29, 1999



OFFICE OF THE  
ATTORNEY GENERAL  
STATE OF TEXAS

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Ms. Judith A. Hunter  
Paralegal  
City of Georgetown  
City Attorney's Office  
P.O. Box 409  
Georgetown, Texas 78627-0409

OR99-0280

Dear Ms. Hunter:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123504.

The City of Georgetown received a request for the statement of the accused in connection with a sexual assault case. You seek to withhold the requested information under section 552.108 of the Government Code.

Section 552.108 excepts from required public disclosure, *inter alia*:

(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[.]

You advise that the individual whose statement is sought by the requestor "was convicted and is currently serving a 25-year sentence" and contend that release of the requested statement "would interfere with law enforcement or prosecution." You also argue that the requested information "falls squarely within the realm that the Attorney General in [Open Records Decision No. 127 (1976)] held as protected, since it is entirely witness information."

In the first place, the statement of the accused does not in our opinion constitute a witness statement under the referenced decision. *See* Open Records

Decision No. 127 at 4 (1976). Nor do we believe that you have established how release of the requested information would interfere with law enforcement or prosecution or otherwise fall within the protection of section 552.108. Although you argue that the records relate to a criminal investigation that is still pending, the records show that the accused has been convicted and is serving a 25 year sentence. Therefore, the requested statement is not protected by section 552.108.

We note, however, that the name of the victim in the requested statement must be withheld under the privacy aspect of section 552.101. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within 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. We have marked the information which must be withheld under common-law privacy.

We note, too, that the statement in question contains a social security number which may be confidential under section 405(c)(2)(C)(vii)(I), title 42, of the United States Code. That section makes confidential social security numbers that are obtained or maintained pursuant to any provision of law, enacted on or after October 1, 1990. Except as noted above, you must release the requested statement.

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,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ch

Ref: ID# 123504

Enclosures: Submitted documents

cc: Mr. Michael D. Hanna  
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(w/o enclosures)