



February 10, 1999

Ms. Judith Hunter
Paralegal
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR99-0416

Dear Ms. Hunter:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121711.

The City of Georgetown (the "city") received a request for offense/incident reports for September 14 and 15, 1997, including the names and addresses of victims, but excluding "reports relating to elderly victims of abuse, juveniles, sexual assault victims or anyone exempted SPECIFICALLY by the Texas Open Records Act." You have submitted to this office six reports as responsive to the above request for information. You assert that most of the information at issue is excepted from disclosure under section 552.108 of the Government Code. You also assert that some of the information is excepted from disclosure under common-law privacy as protected under section 552.101 of the Government Code. We will address the reports at issue and your arguments against disclosure.

(1) Service No. 97-18886 - You indicate that the front page information concerning this incident has been released, but you also assert that release of the remaining information "would interfere with detection, investigation or prosecution of crime (Section 552.108) in future law enforcement efforts." Section 552.108 is divided into subsections (a), (b), and (c). Subsection (c) provides that "basic information about an arrested person, an arrest, or a crime" is not excepted from disclosure under this section. Subsection (b) provides an exception from disclosure for certain internal records of a law enforcement agency or prosecutor that are maintained specifically for the agency or prosecutor's internal use in matters relating to law enforcement or prosecution. Subsection (a) is of broader scope, more generally concerning records held by a law enforcement agency or prosecutor that deal with the detection, investigation, or prosecution of crime.

Section 552.108(a)(1) provides an exception for information when release would "interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming an exception from disclosure under section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *Ex parte*

Pruitt, 551 S.W. 2d 706 (Tex. 1977). A governmental body may show that release of information would interfere with law enforcement by affirmatively stating to this office that the information at issue pertains to an ongoing criminal investigation or pending criminal case. Your letter indicates that this case was closed by conviction. It is not apparent to this office, nor do you explain, how releasing information concerning a case which was closed by conviction would interfere with future law enforcement efforts. We note, however, that you must withhold from disclosure the driver's license number, which is confidential under section 552.130 of the Government Code. The remaining information must be released.

(2) **Service No. 97-18926** - You state that this report concerns an incident which was suspended and that the report is "an internal record which relates to a law enforcement investigation that did not result in conviction or deferred adjudication." We do not believe that incident or offense reports are maintained only for the city police department's internal use, as provided by section 552.108(b). Gov't Code § 552.108(b) (providing exception to disclosure for "[a]n 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"). Section 552.108(a)(2) provides a more general exception for police records that concern an investigation that has come to some type of final result other than a conviction or deferred adjudication. A governmental body may show the applicability of section 552.108(a)(2) by affirmatively stating to this office that the criminal investigation or prosecution has concluded, but that the conclusion was a result other than conviction or deferred adjudication. We agree that you have shown the applicability of section 552.108(a)(2) to most of the information in the report.

However, the basic information concerning the incident is not excepted from disclosure by section 552.108(a)(2). Gov't Code § 552.108(c) (providing that section 552.108 does not except "basic information" from disclosure"). Basic information is the type of information that is generally included on the front page of an offense report, including a detailed description of the incident and the identity of the complainant. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [15th Dist.] 1975), *writ ref'd n.r.e. per curiam*, S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Although this information is generally found on the front page of an offense report, its location is not determinative and it must be released regardless of where it is located. To determine what information must be released, the type of information must be examined rather than where it is located. *See* Open Records Decision No. 127 at 5 (1976).

You assert that the complainant's identity should be withheld from disclosure due to concerns about the complainant's safety should her name be released. Included in the categories of information usually open to the public are a detailed description of the incident, the location of the incident, and identification and description of the complainant. *Id.* But there are special situations in which front page offense report information may be held from disclosure. For example, in Open Records Decision No. 366 (1983), this office agreed that the statutory predecessor to section 552.108 protected from disclosure information about an ongoing undercover narcotics operation, even though some of the information at issue was

front page information contained in an arrest report. The police department explained how release of certain details would interfere with the undercover operation, which was ongoing and was expected to culminate in more arrests. Open Records Decision No. 366 (1983). Also, in Open Records Decision No. 333 (1982), this office agreed that certain front page arrest report information could be withheld from disclosure. The information in question identified certain individuals as being informants and potential informants. *Id.* at 2. Some of the front page information specifically identified individuals being considered by the vice division in targeting certain locations. *Id.*

In this situation, the complainant alleges harassment by individuals who already know the complainant's identity. You have not explained how public release of the complainant's name in this situation involves "a public safety issue." Based upon the information provided to this office, we do not think that you have shown special circumstances sufficient to overcome the presumption of public access to front page information.

You contend that the identity of the complainant is excepted from disclosure pursuant to common-law privacy as encompassed by section 552.101 of the Government Code. The test for whether information should be withheld from disclosure under common-law privacy is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977). There are certain types of crimes in which the release of identifying information about the victim and a detailed description of the offense may implicate an individual's common-law privacy interests. It was on this basis, in Open Records Decision No. 339 (1982), that this office determined that all identifying information regarding a sexual assault victim must be withheld from disclosure. We have reviewed the report at issue and conclude that the complainant's identity is not protected from disclosure under common-law privacy. The front page information, including the identity of the complainant, must be released.

(3) Service Nos. 97-18911, 97-18929, 97-18996 - You indicate that these cases involve investigations which apparently concluded but in a final result other than conviction or deferred adjudication.¹ Based on the information provided, we agree that you have shown the applicability of section 552.108(a)(2) to all but the front page information of these reports. Thus, you may withhold the reports, except for the front page information, which you indicate has already been released. We note that you originally also asserted that No. 97-18929 is protected from disclosure under section 552.101. Because we understand that you have already released the front page information, it is our understanding you do not assert section 552.101 for the front page information. Since the remaining portion of this

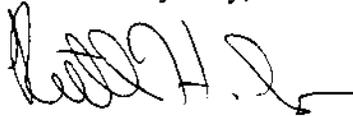
¹ We advise that in the future when the city asserts section 552.108(a)(2), you should affirmatively state that the investigation has actually concluded if you wish to avoid a possible waiver of the city's section 552.108(a)(2) argument by failing to adequately explain how this exception is applicable.

report may be withheld from disclosure under section 552.108(a)(2), we need not otherwise address your section 552.101 argument.

(4) Service No. 97-18986 - You assert that "release of the information would interfere with the detection, investigation or prosecution of the case." You also state that the case is still pending because the defendant received deferred adjudication. As we have explained, a governmental body claiming an exception from disclosure under section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. You claim that the case is still pending, but we note that section 552.108(a)(2) indicates that for purposes of section 552.108, both conviction and deferred adjudication are final conclusions of a case. It is not apparent to this office, nor have you explained, how or why release of this report would interfere with law enforcement. It must therefore be released, except for the marked driver's license number, which is confidential under section 552.130 of the Government Code, and the criminal history information obtained from the Texas Crime Information Center, which is confidential under section 411.084 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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 121711

Enclosures: Submitted documents

cc: Mr. Brian Collister
KTBC
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(w/o enclosures)