



July 2, 1999

Ms. Dianne Eagleton
Records Division
North Richland Hills Police Department
P.O. Box 820609
North Richland Hills, Texas 76182-0609

OR99-1850

Dear Ms. Eagleton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125440.

The North Richland Hills Police Department (the “department”) received a request for a particular offense report. You claim that the offense report is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information at issue.

Section 552.108 of the Government Code provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 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 (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.

(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 is excepted from the requirements of Section 552.021 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 the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming section 552.108 must reasonably explain, if the requested information does not supply the explanation on its face, how and why section 552.108 applies to the requested information. *See* Gov't Code § 552.301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You quote language from two subsections of section 552.108, but have not explained how those subsections apply to the requested information. Because you have not met your burden of showing the applicability of section 552.108, we must conclude that the requested offense report is not excepted from disclosure under section 552.108.

Section 552.101 of the Government Code 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. In *Industrial Foundation*, the Texas Supreme Court held that information that relates to, among other things, sexual assault is intimate and embarrassing that is generally of no legitimate public interest. *Id.* at 683; *see also* Open Records Decision Nos. 393 (1983), 339 (1982).

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 (1982), 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 in the offense report that the department must withhold from the general public to protect the identity of the victim. The remaining information must be released.

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.

Sincerely,

A handwritten signature in black ink that reads "Karen Hattaway". The signature is written in a cursive, flowing style.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 125440

Encl. Submitted documents

cc: Mr. Joseph A. Justice
7701 Deaver Drive
North Richland Hills, Texas 76180
(w/o enclosures)