



August 19, 1999

Ms. Katherine Cary
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR99-2355

Dear Ms. Cary:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 126821.

The Office of the Attorney General (the "OAG") received a request for "a copy of the accident report" concerning a specified assault incident.¹ In response to the request, you submit to this office for review two pages which appear to be a representative sample of the information at issue. You state that "[t]he first page of the offense report has been released."² However, you claim that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions and arguments you raise and have reviewed the information submitted.

Section 552.108, the "law enforcement" exception, reads in part 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;

¹Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the *tenth* business day after the date of receiving the written request. We note that although the requestor's open records letter is dated April 19, 1999, the facsimile cover sheet to the letter is dated May 19, 1999. We assume the discrepancy in the dates is the consequence of a typographical error, and the correct date of the request is May 19, 1999. Therefore, based on the information provided to this office, we conclude that the OAG has met its ten-day deadline for requesting an opinion from this office.

²As you have noted, basic information normally found on the front page of an offense report is generally considered public. See Gov't Code § 552.108(c); *Houston Chronicle Publ'g 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); Open Records Decision No. 127 (1976).

(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.

....

(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.

See Gov't Code § 552.108. 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). You have not stated that the requested information pertains to an ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Thus, you have not met your burden under section 552.108(a)(1).

A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. In your brief to this office, you state that “[t]his criminal case is closed, but involves a family violence matter.” It is not clear to this office, nor have you explained, how or if the investigation has actually concluded. In this instance, because you have provided no specific representation concerning the status of the criminal investigation, we conclude that the OAG has not met its burden under section 552.108. Therefore, the OAG may not withhold any of the requested information 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.” This section protects information coming within the common-law right to privacy. Protection of the victim’s common-law privacy interests constitutes a compelling reason for withholding information from disclosure. 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). Although portions of the requested information may be considered highly intimate and embarrassing, there is a legitimate public interest in the criminal activities. Therefore, we conclude that the submitted information may not be withheld under section 552.101 in conjunction with common-law privacy.

You also ask whether the requested information is protected by article 1, section 30(a) of the Texas Constitution, which affords a crime victim 1) “the right to be treated with fairness and with respect for the victim’s dignity and privacy throughout the criminal justice process,” and 2) “the right to be reasonably protected from the accused throughout the criminal justice process.” We note the relative lack of jurisprudence addressing article 1, section 30. *See, e.g., State ex. rel. Hilbig v. McDonald*, 839 S.W.2d 854 (Tex. App.—San Antonio 1992). (provision does not require victim’s access to prosecutor’s file). You assert that “[w]ithholding the offense report will protect the victim’s privacy,” however, you also appear to specifically seek protection for the victim’s “family relations” under the constitutional provision. In our opinion, if it had been the intent of the legislature to extend such blanket protection to crime victims generally, the provision at issue would have been more clearly and specifically stated. Since article 1, section 30 provides for “reasonable” protection of the crime victim from the accused, we believe that the degree of privacy protection afforded by the provision must be determined on a case-by-case basis. Under the facts presented and the information at issue, we conclude that the submitted offense report narrative may not be withheld under article 1, section 30(a) of the Texas Constitution.

We are resolving this matter with an informal letter ruling rather than with a published open records decision.³ 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,



Sam Haddad
Assistant Attorney General
Open Records Division

³In reaching our conclusion, 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 Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

SH/nc

Ref: ID# 126821

encl. Submitted information

cc: Ms. Jenna Hunt
Dental Benefits
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(w/o enclosures)