



August 20, 1999

Mr. Tom Cloudt
First Assistant District Attorney
33rd Judicial District
P.O. Box 725
Llano, Texas 78643

OR99-2367

Dear Mr. Cloudt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128434.

The 33rd Judicial District Office of the District Attorney (the "office") received a request for records relating to a certain sexual assault offense. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that if the indictment, motions, and notices have been filed with a court, they must be released. Information filed with a court is generally a matter of public record and may not be withheld from public disclosure. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992).

Section 552.108(a)(2) of the Government Code provides in part:

(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:

* * *

(2) it is information that deals with the detection,

¹In 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 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.

investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

* * *

(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.

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. You inform us that the information relates to a case that was dismissed after indictment and before trial. Because the documents at issue deal with the detection, investigation, or prosecution of crime which concluded in a final result other than a conviction or deferred adjudication, you may withhold this information under section 552.108(a)(2) of the Government Code.

We note, however, that information normally found on the front page of an offense report is generally considered public. *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). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Gov't Code § 552.108(c); *see* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

Because the information concerns an alleged sexual assault, certain information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information may be withheld on the basis of common-law privacy. The doctrine of 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 the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Generally, any information tending to identify the sexual assault victims should be withheld pursuant to common-law privacy. *See* Open Records Decision No. 393 (1983). Thus, you must withhold any basic information that identifies the victim of the sexual assault.

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,



Sue M. Lee
Assistant Attorney General
Open Records Division

SML\nc

Ref: ID#128434

encl: Submitted documents

cc: Mr. Henry Moore
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(w/o enclosures)