



July 9, 2001

Mr. J. David Dodd, III  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR2001-2922

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 149179.

The City of Allen (the "city"), which you represent, received a request for police reports relating to a specified individual and street address and to an alleged theft. You claim that the responsive reports contain information that is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the documents you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert that all or part of police report no. 00-52283 is confidential under section 552.101 in conjunction with the common law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common law privacy when the information (1) is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) is of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The matters deemed to be intimate and embarrassing in *Industrial Foundation* include sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimacy, psychiatric treatment, attempted suicide, and injuries to reproductive organs. *See* 540 S.W.2d at 683; *see also* Open Records Decision No. 659 at 5 (1999) (listing other types of information that attorney general has held to be protected by a right to privacy). We have marked the information in report no. 00-52283 that is protected by common law privacy. The city must withhold the marked information under section 552.101. The rest of report no. 00-52283 must be released.

You claim that a second responsive report is excepted from disclosure under section 552.108 of the Government Code. Section 552.108, the "law enforcement exception," protects "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that raises 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 that information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You represent to this office that report no. 01-2385 pertains to a pending criminal investigation and that its release would interfere with the police department's ability to detect, investigate and prosecute the crime. Based on this representation and our review of report no. 01-2385, we find that you have demonstrated that the release of this report would interfere with a pending criminal case. See Gov't Code § 552.108(a)(1); *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) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 at 3 (1978).

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The city must release the kind of information that is considered to be basic front-page information, including a detailed description of the offense, even if this information does not actually appear on the front page of the offense or arrest report. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The city may withhold the remaining information in report no. 01-2385 under section 552.108(a)(1).

In summary, portions of report no. 00-52283 must be withheld from disclosure under section 552.101 of the Government Code in conjunction with common law privacy. The rest of that report must be released. Report no. 01-2385 is excepted from disclosure under section 552.108(a)(1) of the Government Code, but the city must release basic information contained in that report under section 552.108(c).<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

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<sup>1</sup>As we are able to make these determinations, we need not address section 552.103. We note, however, that section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). See Open Records Decision No. 597 (1991).

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 149179

Enc. Marked documents

c: Mr. Nevel Maitland  
5989 North McDonald Street  
Melissa, Texas 75454  
(w/o enclosures)