



February 28, 2002

Mr. Craig Magnuson
City of Mansfield
1305 East Broad Street
Mansfield, Texas 76063-1896

OR2002-0984

Dear Mr. Magnuson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159192.

The City of Mansfield (the "city") received a request for copies of a specified police report. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We first note that "information that is also contained in a court record" is subject to required public disclosure under section 552.022(a)(17) of the Government Code. Section 552.022(a) provides that this information is not excepted from required disclosure under the Act unless the information is expressly confidential under other law. Section 552.108 is a discretionary exception which does not constitute other law that makes information subject to section 552.022(a)(17) confidential. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108). Therefore, the submitted court documents that we have marked must be released.

Generally, information identifying a victim of sexual assault is confidential under section 552.101 in conjunction with the common-law right of privacy. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 393 (1983). However, in *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992), the sexual assault victim's name became part of the public record because it was used in the indictment, motion in limine, and the charge to the jury. Thus, the court held that a trial court may not prohibit a newspaper from disclosing the victim's true identity when the information was obtained from the public record. *Id.* at 58. Accordingly, the city may not withhold the sexual assault victim's name within the submitted court documents under section 552.101 because the documents are public records.

We now address your claim under section 552.108 for the remaining information. Section 552.108(a)(1) states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming 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. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You advise that while the suspect identified in the submitted report was initially placed on deferred adjudication, the individual has now been charged with another offense in violation of the deferred adjudication agreement. You state that as a result, criminal charges have been filed based on the incident to which the report pertains, and the case is currently pending in the Tarrant County District Court. We therefore conclude that release of the information "would interfere with the detection, investigation, or prosecution of crime." *Id.* Thus, you may withhold the requested report under section 552.108(a)(1). While section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime under section 552.108(c), you state that you have released basic information relating to the police report. Because section 552.108(a)(1) is dispositive, we do not address your claims under section 552.108(b)(1) or 552.101 for this information.

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 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 159192

Enc. Submitted documents

c: Mr. James N. Bennett
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(w/o enclosures)