



March 25, 2002

Mr. Joe Jackson  
Assistant City Attorney  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842-9960

OR2002-1456

Dear Mr. Jackson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161050.

The City of College Station (the "city") received a request for a copy of police report 88-017311. You inform us that the front page of the report is being made available to the requestor with the exception of a driver's license number,<sup>1</sup> but claim that the remainder of 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 reviewed the submitted information.

Section 552.108, the "law enforcement exception," provides in part:

- (a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 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

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<sup>1</sup>We note that in Open Records Letter Ruling No. 2001-5847 (2001), this office issued a previous determination to the College Station Police Department, ruling that the department may generally withhold Texas driver's license numbers from requested information without the necessity of requesting a ruling from this office.

relation to an investigation that did not result in conviction or deferred adjudication; . . .

(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 [public disclosure] 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; . . .

(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.

You assert that the information contained in Exhibits 1-59 is excepted under section 552.108(a)(2). In support, you have submitted a letter from the Brazos County District Attorney's Office stating that the charges in this case were dismissed prior to an indictment, as well as a notation signed by the Chief of Police indicating that the case was dismissed. On this basis, we conclude that most of the information contained in Exhibits 1-59 is excepted from disclosure under section 552.108(a)(2).

Section 552.108 does not, however, except information that is generally found on the first page of an offense report. See generally *Houston Chronicle Publishing 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). Basic information includes the identification and description of the complainant. Open Records Decision No. 127 (1976). However, because the offense report contains information about an alleged sexual assault, certain front page offense report 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," including information protected by 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). In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify the victim. See also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). We note that in this case, the offense report uses a pseudonym for the sexual assault victim and, therefore, the victim's identity is protected. However, you must withhold the victim's identifying information such as home address and telephone number under section 552.101 and

common-law privacy. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

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,

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

Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 161050

Enc. Submitted documents

c: Mr. Carl Ofczarzak  
Route 1, Box 291  
Somerville, Texas 77879  
(w/o enclosures)