



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 3, 2002

Mr. Brad Norton
Assistant City Attorney
City of Austin Law Department
P. O. Box 1088
Austin, Texas 78767-8845

OR2002-6878

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173012.

The Austin Police Department (the "department") received a written request for four specific police reports. You indicate that one of the requested police reports will be released to the requestor. You contend, however, that the remaining three police reports are excepted from required disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." One of the requested police reports, case number 01-1691155, pertains to an alleged instance of child endangerment. Section 261.201(a) of the Family Code provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, *the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.* [Emphasis added.]

You have not informed this office of any rules the department has adopted that would permit access to case number 01-1691155. Because case number 01-1691155 pertains to an investigation of possible abuse or neglect of a child, this office concludes that the department must withhold these documents in their entirety pursuant to section 261.201 of the Family Code. *But see* Fam. Code § 261.201(b) (provision for court-ordered access), (f) (limited right of access to records held by Department of Protective and Regulatory Services).

You next contend that case number 01-2130801 is excepted from public disclosure pursuant to sections 552.101 and 552.108(a)(1). Because your section 552.108 claim is more inclusive, we will address it first. Section 552.108(a)(1) of the Government Code excepts from required public disclosure “[i]nformation 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.” Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because the release of such information presumptively would interfere with the detection, investigation, or prosecution of crime. *See 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). You state that case number 01-2130801 pertains to a pending criminal investigation. We therefore conclude that the department may withhold most of case number 01-2130801 pursuant to section 552.108(a)(1) of the Government Code.

Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. Accordingly, the department must release these types of information from case number 01-2130801 in accordance with *Houston Chronicle*, with the following exception.

Case number 01-2130801 pertains to an alleged sexual assault. Section 552.101 of the Government Code also excepts from required public disclosure information protected by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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* it is of no legitimate concern to the public. *Id.* at 683-85. Clearly, an instance of sexual assault implicates the privacy interests of the assault victim. *See id.* at 683; Open Records Decision No. 339 (1982) (identity of sexual assault victim protected by common law privacy). We therefore conclude that the department must withhold all information tending to identify the victim of the alleged sexual assault. We have marked case number 01-2130801 accordingly.

Finally, you seek to withhold case numbers 01-2291683 and 01-1700141 pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) of the Government Code excepts from required public disclosure “[i]nformation held by a law enforcement agency . . . that deals with the detection, investigation, or prosecution of crime . . . if . . . 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.” You inform us that case numbers 01-2291683 and 01-1700141 pertain to criminal investigations that did not result in a conviction or deferred adjudication. After reviewing the information at issue, we conclude that the department may withhold most of case numbers 01-2291683 and 01-1700141 pursuant to section 552.108(a)(2) of the Government Code. .

However, as noted above, section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Although you also contend that case report 01-1700141 ~~also~~^{is} is excepted from public disclosure pursuant to section 552.101 in conjunction with the common-law right of privacy, this office could discern no basic information in case number 01-1700141 that implicates an individual’s privacy interest. Consequently, the department must release all basic information, including a detailed description of the alleged offenses, from case numbers 01-2291683 and 01-1700141 in accordance with *Houston Chronicle*.

In summary, the department must withhold case number 01-1691155 in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Most of the information contained in case number 01-2130801 may be withheld pursuant to section 552.108(a)(1) of the Government Code; however, the department must release the basic information from this report, except for the identity of the sexual assault victim, which must be withheld pursuant to common-law privacy. The department may withhold most of the information contained in case numbers 01-2291683 and 01-1700141, but all basic information must be released from those two reports.

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

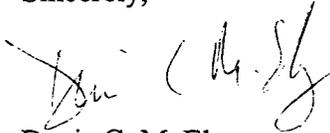
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/RWP/lmt

Ref: ID# 173012

Enc: Submitted documents

c: Mr. Jo Vernon
P. O. Box 4337
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(w/o enclosures)