



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

December 30, 2002

Ms. Jan Clark  
Assistant City Attorney  
City of Houston - Legal Department  
P.O. Box 1562

OR2002-7463

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174323.

The Houston Police Department (the "department") received a request for all information regarding "[d]efendant Dennis George Mohedano, SPN #01187023, case#'s 066628001010 and 060016001010." You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the Exhibit 2 of the submitted information consists of an affidavit for an evidentiary search warrant. If a search warrant has been executed, its supportive affidavits are made public by statute. *See* Code Crim. Proc. art. 18.01(b). You argue that portions of the executed search warrant are excepted from release pursuant to section 552.101 in conjunction with common-law privacy.<sup>1</sup> *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (type of information considered intimate and embarrassing under common-law privacy and thus made confidential includes information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). We agree that the submitted affidavit contains information that, in another document, would be considered confidential under common-law privacy. However, we point out that statutory law prevails where a provision of the common-law

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<sup>1</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law privacy.

conflicts with a statute. See Gov't Code § 312.006; *Pittman v. Time Secur.* 301 S.W.2d 521 (Tex. Civ. App.--San Antonio 1957) (where common-law inconsistent with statutes, common-law must yield); 67 TEX. JUR. 3D *Statutes* § 159 (2002). Furthermore, the Public Information Act's (the "act") exceptions do not, as a general rule, apply to information made public by other statutes. See also *Houston Chronicle Publ'g Co. v. Woods*, 949 S.W.2d 492, 498-9 (Tex. App.--Beaumont 1997, orig. proceeding) (search warrant affidavit which is "public information" if executed is open to disclosure without exception); *Houston Chronicle Publ'g Co. v. Edwards*, 956 S.W.2d 813 (Tex. App.--Beaumont 1997, orig. proceeding); Open Records Decision No. 525 at 3 (1989) (holding that the act's exceptions do not generally apply to information made public by statutes other than the act). Accordingly, since the search warrant has been properly executed, the department must release the submitted affidavit in its entirety. We have marked the search warrant affidavit that must be released in its entirety pursuant to article 18.01(b) of the Code of Criminal Procedure.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 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 state, and have submitted information showing, that the requested offense report relates to a pending criminal prosecution. Based upon this representation, we conclude that the release of the offense report 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) (court delineates law enforcement interests that are present in active cases). Accordingly, you have established the applicability of section 552.108(a)(1) to the submitted information.

However, section 552.108 is inapplicable to 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 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).

However, because the responsive 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. 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). 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). Accordingly, we have marked the types of identifying information in the submitted offense report that you must withhold pursuant to common-law privacy. *See Open Records Decision Nos. 393 (1983), 339 (1982).*

In summary, you must release the search warrant affidavit marked Exhibit 2 in its entirety pursuant to article 18.01(b) of the Code of Criminal Procedure. You must release front page offense report information pursuant to section 552.108(c) with the exception of information that would identify the victim of a sexual assault, which you must withhold pursuant to section 552.101 in conjunction with common-law privacy. Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See Gov't Code § 552.007.* As article 18.01(b), section 552.101, and section 552.108 are dispositive, we need not consider your assertions under sections 552.103 and 552.130.<sup>2</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 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

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<sup>2</sup>We note that front page offense report information may not be withheld from disclosure under section 552.103. *See Open Records Decision No. 597 (1991)* (concluding that statutory predecessor to section 552.103 did not except basic information in offense report).

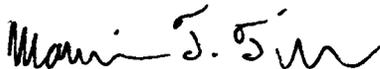
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The 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,



Maverick F. Fisher  
Assistant Attorney General  
Open Records Division

MFF/seg

Ref: ID# 174323

Enc: Submitted documents

c: Mr. David Raziq  
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(w/o enclosures)