



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2003

Ms. Mia Settle-Vinson
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2003-6451

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187578.

The Houston Police Department (the "department") received a written request from an attorney for all police records pertaining to the alleged sexual assault of the requestor's client. The department subsequently received a second request from another individual for a specific offense report that also comes within the scope of the first records request. You indicate that some of the responsive information will be released to the requestors. You contend, however, that the remaining information coming within the scope of the requests is excepted from required disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) You contend that offense report #128526998R is made confidential under section 261.201(a) of the Family Code, which provides as follows:

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 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Section 261.201 makes confidential records obtained or created during the course of an investigation of child abuse. After reviewing offense report #128526998R, we conclude that this report was not obtained or created during a child abuse investigation. Accordingly, no portion of this report is made confidential under section 261.201 of the Family Code. We therefore must consider the applicability of section 552.108 of the Government Code to this and the other offense reports you submitted to this office.

Section 552.108(a)(1) of the Government Code exempts 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 it is presumed that the release of such information 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). Because you state that the submitted information pertains to a criminal investigation that is “inactive pending additional leads” and “may be reactivated once additional leads are developed,” we conclude that the department may withhold most of the submitted information pursuant to section 552.108(a)(1) of the Government Code.

Section 552.108 does not, however, exempt from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c); *see also* Open Records Decision No. 127 (1976) (outlining types of information required to be released under *Houston Chronicle*). The department therefore must release these types of information, including a detailed description of each offense, regardless of whether the basic information is actually contained on the front page of an offense report, in accordance with *Houston Chronicle*, with the following qualification.

Although the identity of a complainant is generally considered “basic information,” as noted above, the submitted police reports pertain to alleged sexual assaults. Section 552.101 of the Government Code also exempts 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 although the attorney representing the assault victim has a special right of access to all basic information tending to identify the victim, *see* Gov't Code § 552.023, the department must withhold all such information from the other requestor pursuant to section 552.101 of the Government Code in conjunction with the common-law right of privacy. We have marked the information that the department must withhold on privacy grounds.¹

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).

¹Because we resolve your request under sections 552.101 and 552.108, we need not address the applicability of the other exceptions you raised except to note that section 552.103 normally does not except from disclosure the basic information required to be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

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 Dep't of Pub. 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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/RWP/seg

Ref: ID# 187578

Enc: Submitted documents

c: Mr. Joe Allen Svadlenak
Axcel Claim Service
P.O. Box 924886
Houston, Texas 77292
(w/o enclosures)

Mr. Ross A. Sears, II
Sears Crawford, L.L.P.
300 Fannin Street, Suite 300
Houston, Texas 77002-2031
(w/o enclosures)