



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 7, 2005

Ms. Beverly West Stephens  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2005-11000

Dear Ms. Stephens:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 237502.

The San Antonio Police Department (the "department") received a request for reports of ten specified cases involving Hurricane Katrina evacuees and "the updated spreadsheet of shelter-related cases." You inform us that the department is releasing three of the requested reports. You claim that the other seven reports are 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 information you submitted. We note that the department has neither submitted nor claimed an exception to the disclosure of the requested spreadsheet information. Therefore, the department must also release that information, to the extent that it existed when the department received this request.<sup>1</sup> See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

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<sup>1</sup>We note that the Act does not require the department to release information that did not exist when it received this request or to create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Section 552.101 of the Government Code exempts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. Section 611.002 of the Health and Safety Code provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see also id.* § 611.001 (defining "patient" and "professional"). Sections 611.004 and 611.0045 provide for access to information that is made confidential by section 611.002 only by certain individuals. *See id.* §§ 611.004, 611.0045; Open Records Decision No. 565 (1990). We have marked information in report number 625072 that is confidential under section 611.002 of the Health and Safety Code. As there is no indication that the requestor has a right of access to that information under sections 611.004 and 611.0045, the department must withhold the marked information under section 552.101 of the Government Code.

Section 552.101 also encompasses the common law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common law privacy when the information is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common law privacy protects the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (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). This office has determined that other types of information also are private under section 552.101. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has held to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress).

You contend that report numbers 622679, 623981, 624017, and 625072 contain information that is protected by common law privacy. Ordinarily, common law privacy would protect only the intimate or embarrassing portions of the reports in question. In this instance, however, the requestor already is generally aware of the nature of the incidents to which the reports pertain. Under these circumstances, withholding further details of the incidents

would not sufficiently protect the privacy of the individuals who are the subjects of the information. Instead, and in this specific instance, we conclude that the identities of the individuals to whom the private information pertains must be withheld under section 552.101 of the Government Code and common law privacy. We have marked that information.

Next, we address your claim under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from 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[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that report numbers 619307, 633844, and 636462 relate to open investigations. You assert that the release of these reports would interfere with the detection, investigation, or prosecution of crime. Based on your representations, we find that section 552.108(a)(1) is applicable to report numbers 619307, 633844, and 636462. *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).

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. Basic information includes an identification and description of the complainant and a detailed description of the offense. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information under section 552.108(c), even if the information does not literally appear on the front page of an offense or arrest report.

In this instance, however, report number 619307 relates to an investigation of a sexual offense. Therefore, the identity of the complainant in that report must be withheld under section 552.101 to protect the complainant’s common law privacy interests. *See Gov’t Code* § 552.101; *Indus. Found.*, 540 S.W.2d at 683; Open Records Decision Nos. 393 (1983), 339 (1982). We have marked that information. Otherwise, the department must release basic information with respect to report numbers 619307, 633844, and 636462. The department may withhold the remaining information in those three reports under section 552.108(a)(1).

In summary: (1) the department must withhold the marked information in report number 625072 that is confidential under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code; (2) the department also must withhold the marked information in report numbers 622679, 623981, 624017, and 625072 that is confidential under section 552.101 in conjunction with common law privacy; (3) except for the basic information that must be released under section 552.108(c), the department may

withhold report numbers 619307, 633844, and 636462 under section 552.108(a)(1); and (4) in releasing basic information with respect to report number 619307, the department must withhold the marked information that identifies the complainant under section 552.101 and common law privacy. The department must release the rest of the submitted 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).

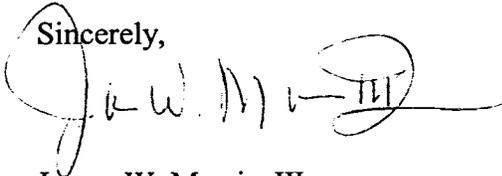
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 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 Office of the Attorney General 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. 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, appearing to read "J. W. Morris, III". The signature is written in a cursive style with a large initial "J" and a distinct "III" at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 237502

Enc: Submitted documents

c: Ms. Vianna Risa Davila  
San Antonio Express-News  
P.O. Box 2171  
San Antonio, Texas 78297  
(w/o enclosures)