



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 24, 2006

Mr. Paul J. Stewart
Assistant County Attorney
Fort Bend County
301 Jackson, Suite 728
Richmond, Texas 77469-3108

OR2006-02914

Dear Mr. Stewart:

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# 244734.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all information from case numbers 04-16713, 04-1230, and 04-10803. You state that you have released some information to the requestor. You claim that the remaining submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. Section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007 is only applicable to records pertaining to juvenile suspects or offenders. *See id.* Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, or witness. Although you raise section 58.007 for report number 04-10803, this report does not identify a juvenile suspect or offender. Furthermore, none of the submitted reports identify juvenile suspects or offenders. Thus, none of the submitted information may be withheld on this basis.

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 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 that the requested information relates to pending criminal investigations. Based upon this representation, we conclude that the release of the information at issue 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).

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *See Gov’t Code § 552.108(c)*. We believe such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d 177; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information includes the identification and description of the complainant. *See Houston Chronicle*, 531 S.W.2d at 187; Open Records Decision No. 127. We note, however, that the submitted offense reports 04-1230 and 04-16713 pertain to alleged sexual assaults. Thus, certain basic information from these reports is generally excepted from disclosure under section 552.101 of the Government Code.

Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the

information is not of legitimate concern to the public. *Indust. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information that tends to identify a victim of sexual assault is protected under common-law privacy. See Open Records Decision No. 339 (1982); *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). Thus, the sheriff must generally withhold information identifying the complainant in these cases pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, that section 552.023 of the Government Code gives a person or the person's authorized representative a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest as subject of the information. See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the requestor has a right of access to her own information in case 04-16713 and the sheriff may not withhold it under section 552.101. However, the sheriff must withhold the information identifying the complainant in case 04-1230 under section 552.101 of the Government Code. All other basic information must be released to the requestor. The sheriff may withhold the remaining information in the submitted incident reports pursuant to section 552.108(a)(1) of the Government Code.

In summary, the requestor has a right of access to her own information in case 04-16713 and the sheriff may not withhold it under section 552.101. However, the sheriff must withhold the information identifying the complainant in case 04-1230 under section 552.101 of the Government Code. All other basic information must be released to the requestor. The sheriff may withhold the remaining information in the submitted incident reports pursuant to section 552.108(a)(1) of the Government Code. As this ruling is dispositive, we do not address the remaining arguments.

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

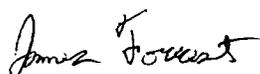
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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,



James Forrest
Assistant Attorney General
Open Records Division

JF/er

Ref: ID# 244734

Enc. Submitted documents

c: Ms. Mindi Noack
1131 Wellshire Drive
Katy, Texas 77494
(w/o enclosures)