



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 22, 2006

Mr. John J. Carlton  
Attorney for the City of Pflugerville  
Armbrust & Brown, L.L.P.  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701-2744

OR2006-09658

Dear Mr. Carlton.:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 257312.

The Pflugerville Police Department (the "department"), which you represent, received a request for the "cover sheet or public portion of an incident report concerning the stabbing of a 12-year old on June 2, 2006." You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Section 552.108(a) of the Government Code 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). Normally, law enforcement information relating to a pending prosecution may be withheld under section 552.108(a)(1). *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). However, the instant request is for the “cover sheet or public portion” of the incident report that is the subject of the pending prosecution. 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). Basic information refers to the information held to be public in *Houston Chronicle*. You seek to withhold the identities and addresses of the complainant, the victim, and the witnesses, as well as driver's license numbers and the information listed under the “Property” heading of the incident report. We note that the identities of witnesses and driver's license numbers are not considered basic information; therefore, this information may be withheld under section 552.108. Further, we do not find that the information listed under the “Property” heading of the incident report at issue is the type of “property” contemplated by this office in Open Records Decision No. 127. *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). Accordingly, this information may also be withheld under section 552.108.

The identification and description of the complainant is, however, considered to be basic information. You argue that the identity of the complainant should be withheld because “disclosure of any information that may identify or lead to the identification of the child, the child witnesses, or the children's parents may subject the children to retaliation or threats of retaliation from the suspects.” You rely on Open Records Decision No. 628 (1994) in withholding the complainant's identity. In Open Records Decision No. 628, this office found that “section 552.108 of the Government Code may in some circumstances except from disclosure the identity of a juvenile crime victim if a law enforcement agency can show how its release will unduly interfere with law enforcement.” *Id.* at 3. Since the issuance of Open Records Decision No. 628, the legislature has amended section 552.108 by adding subsection (c) which expressly states that basic information is not excepted under section 552.108. Because the complainant's identity is basic information, the department may not withhold it under section 552.108.

We also understand the department to assert that the identity of the complainant is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section also 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). As a general rule, common law privacy does not protect the identity of a crime victim. *See* Open Records Decision No. 438 at 7 (1986) (stating that identity of a complainant, which generally is public information, may be withheld only in unique circumstances). Such information may be withheld under section 552.101 in conjunction with common law privacy only upon a showing of certain “special

circumstances.” *See* Open Records Decision No. 169 (1977). This office considers such “special circumstances” to refer to a very narrow set of situations in which release of the information at issue would likely cause someone to face “an imminent threat of physical danger.” *Id.* at 6. “Special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.*

You state that the department believes that release of the complainant’s identity would potentially jeopardize the safety of the complainant and others. We have considered your position. However, you have not established the presence of special circumstances sufficient to justify the withholding of the complainant’s identity under section 552.101 and common law privacy. Therefore, this information must be released.

In summary, the department may withhold the identities and addresses of any witnesses, as well as driver’s license numbers and information listed under the “Property” heading of the submitted offense report under section 552.108(a)(1) of the Government Code. The remaining submitted information, including the complainant’s identity, must be released as basic 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,



Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/krl

Ref: ID# 257312

Enc. Submitted documents

c: Mr. Tony Plohetski  
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(w/o enclosures)