



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2006

Ms. Julie Joe
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2006-13002

Dear Ms. Julie Joe:

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# 263592.

The Travis County Sheriff's Department (the "department") received a request for any and all records of a particular individual that were created during a specific incarceration period. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. *Id.* at 683.

You contend that the submitted information must be withheld in its entirety under common-law privacy. However, upon review of your arguments and the submitted information, we find that you have failed to demonstrate that the submitted information must be withheld in its entirety in order to protect the privacy interests of the named individual. Accordingly, the submitted information may not be withheld in its entirety under section 552.101 in conjunction with common-law privacy.

Next, we address your argument that the submitted information is excepted from disclosure under section 552.108. 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.” Gov’t Code § 552.108(a)(1). 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 submitted information pertains to an active criminal case that has been forwarded to the Travis County District Attorney’s Office (the “office”). Further, you state that the office objects to the release of the submitted information and that the office believes that release of any part of the submitted information would interfere with detection, investigation, and prosecution of this case. Based upon this representation and our review, we conclude that the release of the submitted information would interfere with the detection, investigation, or prosecution of crime.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).

We note that, generally, section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information includes the identity and description of the complainant. However, information tending to identify a sexual assault victim is protected by common-law privacy and must be withheld pursuant to section 552.101 of the Government Code. *See Indus. Found.*, 540 S.W.2d at 683-85; Open Records Decision Nos. 393 (1983), 339 (1982). Generally, only the complainant’s identifying information must be withheld under common-law privacy. However, in this instance, the requestor knows the identity of the alleged victim; thus, withholding only the identifying information from the requestor would not preserve the victim’s common-law right to privacy. Therefore, in this instance the department may not release any of the basic information pertaining to this incident.

¹ Because our determination on this issue is dispositive, we need not address your remaining arguments against disclosure.

In summary, the basic information must be withheld under section 552.101 in conjunction with common-law privacy. The department may withhold the remaining information under section 552.108(a)(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, 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).

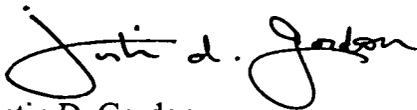
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 that reads "Justin D. Gordon". The signature is written in a cursive style with a large initial "J" and "G".

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/sdk

Ref: ID# 263592

Enc. Submitted documents

c: Mr. S. Rafe Foreman
Foreman, Lewis & Hutchison P.C.
611 South Main Street, Suite 700
Grapevine, Texas 76051
(w/o enclosures)