



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2007

Mr. Julian W. Taylor, III
Law Office of William Shaw, P.C.
Assistant City Attorney
City of Freeport
P.O. Box 3073
Freeport, Texas 77542-1273

OR2007-06355

Dear Mr. Taylor:

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# 279130.

The Police Department of the City of Freeport (the "department"), which you represent, received a request for a specified police report involving the requestor. You claim that the requested 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 552.108 of the Government Code excepts from 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[.]" 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 state that the submitted information relates to a criminal prosecution pending before County Court #1 in Brazoria County. Based on this representation, we conclude that section 552.108(a)(1) is applicable in this instance. *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 section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d at 185; Open Records Decision

No. 127 at 3-5 (1976) (summarizing types of information made public by *Houston Chronicle*). Therefore, other than basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

A complainant's identification is considered basic information and is not excepted from disclosure by section 552.108. However, you claim that the identifying information of the complainant in the submitted information should be withheld because its release would interfere with law enforcement. You further cite to Open Records Decision No. 409 (1984) in support of your claim.

In Open Records Decision No. 409, this office stated that the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis, and found that the governmental body had not indicated how release of the name of a burglary victim would unduly interfere with law enforcement or crime prevention. *See* Open Records Decision No. 409 at 2 (1984). We similarly find that you have not indicated how release of the identifying information of the complainant would unduly interfere with law enforcement or crime prevention in this instance. Therefore, the identifying information may not be withheld on this basis.

You also claim that the complainant's identifying information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 encompasses common-law privacy. The common-law right of privacy 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 types 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. We find that the complainant's identifying information is not protected by common-law privacy. *See* ORD 409 at 2 (1984) (names of burglary victims not ordinarily excepted from disclosure under predecessor to section 552.101 as information deemed confidential by common-law privacy). Accordingly, the identifying information may not be withheld under section 552.101 of the Government Code and must be released to the requestor.

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. The remaining information must be released to the requestor.

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,



Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/jb

Ref: ID# 279130

Enc. Submitted documents

c: Mr. Michael L. Wells
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(w/o enclosures)