



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2007

Mr. John West
General Counsel
Office of the Inspector General
Texas Department of Criminal Justice
P.O. Box 13084
Austin, Texas 78711

OR2007-06847

Dear Mr. West:

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# 279957.

The Office of the Inspector General of the Texas Department of Criminal Justice (the "OIG") received two requests for information regarding the investigations of Barry Ransberger at the Texas Department of Criminal Justice (the "department"). The OIG states that it is releasing the basic information regarding case file number UF.88.3134.01.NE with redactions pursuant to the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).¹ See Gov't Code § 552.029(8) (basic information regarding an alleged crime involving an inmate is subject to required disclosure). You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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,

¹Open Records Letter No. 2005-01067 serves as a previous determination that the present and former home addresses and telephone numbers, social security numbers and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code.

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 case file numbers 05-2516, SA.0663.2005.NE, SC.0313.04.NE, SC.0016.200.NE, and SC.15.0364.05 relate to a pending criminal prosecution being handled by the Special Prosecutions Unit of the OIG. Based upon this representation, we conclude that the release of this information 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). Basic information refers to the information held to be public in *Houston Chronicle* and includes the identification and description of the complainant. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). However, as the criminal investigation at issue pertains to a sexual assault, certain basic information about the crime is excepted from disclosure under section 552.101 of the Government Code in conjunction with 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. *Industrial 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). Thus, the information identifying the sexual assault victim, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy and not released as basic information.

You state that one document in the remaining case file number UF.88.3134.01.NE is excepted from public disclosure under section 552.134 of the Government Code, which provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Upon review we agree that the OIG must withhold the document you have marked in case number UF.88.3134.01.NE under section 552.134 of the Government Code.

In summary, the OIG must withhold information identifying the sexual assault victim, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the remaining basic information, which must be released, the OIG may withhold case file numbers 05-2516, SA.0663.2005.NE, SC.0313.04.NE, SC.0016.200.NE, and SC.15.0364.05 under section 552.108(a)(1) of the Government Code.² The OIG must withhold the document you have marked in case number UF.88.3134.01.NE under section 552.134 of the Government Code. As you do not raise any other exceptions against disclosure, the remaining information must be released.

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

²As our ruling is dispositive, we need not address your remaining arguments for this information.

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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/ma

Ref: ID# 279957

Enc. Submitted documents

c: Ms. Diane Jennings
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