



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2007

Ms. Cathy Duhart
Custodian of Records
Sinton Police Department
217 East Market
Sinton, Texas 78387

OR2007-12048

Dear Ms. Duhart:

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# 289398.

The Sinton Police Department (the "department") received three requests for information pertaining to a specified incident. You claim that the requested 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (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. The submitted documents consist of an investigation file which relates to a consensual relationship between adults that led to an investigation of an improper relationship between an educator and a student. You state that the department wishes to withhold the investigation file in its entirety due to the fact that the victim was a student at the time of the offense and the educator has resigned his position. Upon review,

we note that the educator committed the alleged acts during the scope of his employment with Sinton Independent School District. Information that pertains to an employee's actions as a public servant generally cannot be considered to be beyond the realm of legitimate public interest. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Because the public has a legitimate interest in the conduct of public employees, we find that you have failed to show how the investigation file is confidential in its entirety under common-law privacy. Accordingly, the department may not withhold the investigation file under section 552.101 in conjunction with common-law privacy.

Next, you claim that section 552.108 of the Government Code exempts the investigation file from disclosure. Section 552.108 of the Government Code exempts from 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 investigation file pertains to an open investigation. Further, you indicate that the release of the file would interfere with the department’s investigation. We, therefore, agree that section 552.108(a)(1) is applicable to the submitted investigation file. *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. 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 identification and description of the complainant. *See Houston Chronicle*, 531 S.W.2d at 187; Open Records Decision No. 127 (1976). Here, the complainant is the assistant superintendent of Sinton Independent School District. Thus, the department must release all basic information, including the complainant’s name, under section 552.108(c).¹ The department may withhold the rest of the submitted investigation file under section 552.108(a)(1). We note that you have the

¹We note that the investigation file contains the social security number of the arrestee. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. The requestor has a right, however, to his own social security number. *See generally*, Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles.)

discretion to release all or part of the remaining information in this report that is not otherwise confidential by law.² Gov't Code § 552.007.

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

²Although the student here uses a pseudonym, the department is prohibited from releasing the name of the student involved in the improper relationship with the educator in question. Effective September 1, 2007, the name of a person enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator may not be released to the public and is not public information under Chapter 552, Government Code. Act of May 23, 2007, 80th Leg., R.S., ch. 772, § 1, 2007 Tex. Sess. Law Serv. 1584 (Vernon) (to be codified as an amendment to Tex. Pen. Code Ann. § 21.12).

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,



M. Alan Akin
Assistant Attorney General
Open Records Division

MAA/mcf

Ref: ID# 289398

Enc. Submitted documents

c: Ms. Mary Ann Cavazos
820 North Lower Broadway Street
Corpus Christi, Texas 78401
(w/o enclosures)

Mr. Andres Villasana, III
508 Rowlett
Sinton, Texas 78387
(w/o enclosures)

Ms. Velma Soliz-Garcia
Assistant Superintendent
Sinton Independent School District
P.O. Box 1337
Sinton, Texas 78387
(w/o enclosures)