



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2009

Ms. Cecilia Gamez
Crime Records Bureau
City of McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2009-00906

Dear Ms. Gamez:

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# 333117.

The McAllen Police Department (the "department") received a request for a specific police report. You claim that the requested 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.

Section 552.108 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 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 is related to a pending criminal case. Based on your representation, we conclude that section 552.108(a)(1) is generally applicable to the submitted information.¹ *See Houston Chronicle Publ'g Co. v. City of Houston*, 531

¹As section 552.108(a)(1) is dispositive, we do not address your section 552.108(b)(1) claim for this information.

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).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*, and includes the identity and description of the complainant but not driver’s license numbers. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note that the requested incident report pertains to an alleged sexual assault and a portion of the basic information is protected by common-law privacy.² Common-law privacy 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). Information that either identifies or tends to identify a victim of sexual assault must be withheld under common-law privacy. *See* Open Records Decisions Nos. 393 (1983), 339 (1982).

In this instance, while the alleged victim used a pseudonym, the basic information contains other identifying information of the alleged victim. Thus, we have marked the type of information that identifies or tends to identify the alleged victim and must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining basic information must be released.

In summary, with the exception of basic information, the department may withhold the submitted report under section 552.108(a)(1) of the Government Code. In releasing basic information, the department must withhold the type of information we have marked that identifies or tends to identify the alleged sexual assault victim under section 552.101 of the Government Code in conjunction with common-law privacy.

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 more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php.

²Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the doctrine of common-law privacy. The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Nettles". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jb

Ref: ID# 333117

Enc. Submitted documents

c: Requestor
(w/o enclosures)