



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 5, 2009

Mr. Samuel D. Hawk
Assistant City Attorney
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2009-01526

Dear Mr. Hawk:

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# 334219.

The Dallas Police Department (the "department") received a request for two specified incident reports. You claim that portions of the submitted information are 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 552.108(a)(1) 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). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 0332797-V relates to a pending investigation. Based on your representations and our review, we conclude the release of report number 0332797-V 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., 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests

that are present in active cases). Accordingly, the department may withhold the information you have marked in report number 0332797-V under section 552.108(a)(1). You have also marked portions of report number 0305360-V under section 552.108. You, however, do not make any arguments or specific representations under section 552.108 regarding this report. See Gov't Code § 552.301(e)(1)(A) (providing that governmental body must provide sufficient arguments to establish applicability of claimed exceptions). Accordingly, you have failed to demonstrate how release of report number 0305360-V would interfere with the detection, investigation, or prosecution of crime. Therefore, the department may not withhold the information you have marked in report number 0305360-V under section 552.108.

You claim portions of the remaining information in report number 0305360-V are protected by common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the doctrine of 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (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. Based on your representations and our review, we agree the information you have marked, as well as the additional information we have marked, is intimate and embarrassing and not of interest to the public. Therefore, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department may withhold the information you have marked in report number 0332797-V under section 552.108(a)(1). The department must withhold the marked information in report number 0305360-V under section 552.101 in conjunction with common-law privacy. The remaining information must be released.

This letter ruling is limited to the particular information 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 information 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, 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 cursive script that reads "Olivia A. Maceo".

Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 334219

Enc. Submitted documents

c: Requestor
(w/o enclosures)