



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 26, 2009

Mr. Mark G. Daniel  
Evans, Daniel, Moore & Evans  
115 West Second Street Suite 202  
Fort Worth, Texas 76102

OR2009-02553

Dear Mr. Daniel:

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# 339741 (Request No. 09-036).

The Watauga Police Department (the "department"), which you represent, received a request for information relating to an incident that involved the requestor. 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 information you submitted.

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 prosecution. Based on your representation, we find that section 552.108(a)(1) is generally applicable to the submitted information. *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).

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*. See 531 S.W.2d at 186-88. The department must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

Basic information includes an identification and description of the complainant. See ORD 127 at 3-4. In this instance, the submitted information is related to an alleged sexual assault. Therefore, the complainant's identity is protected by common-law privacy under section 552.101 of the Government Code. See Gov't Code § 552.101; *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982).<sup>1</sup> With the exception of the complainant's identifying information, which we have marked, the department must release basic information in accordance with section 552.108(c). The department may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code. We note that the marked identifying information must be released to the requestor pursuant to section 552.023 of the Government Code if she provides the department with written consent for release in accordance with section 552.229 of the Government Code. See Gov't Code § 552.229(a) (consent for release of information excepted from disclosure to general public but available to specific person under Gov't Code § 552.023 must be in writing and signed by specific person or person's authorized representative); see also *id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).<sup>2</sup>

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](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

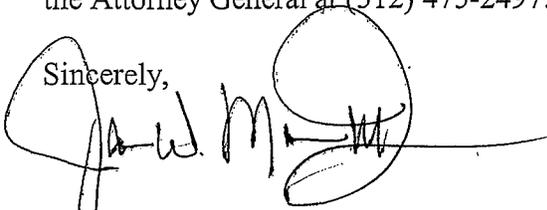
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<sup>1</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

<sup>2</sup>Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

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 "J.W. Morris, III". The signature is written in a cursive style with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 339741

Enc: Submitted documents

c: Requestor  
(w/o enclosures)