



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 5, 2009

Ms. Cheryl K. Byles and Mr. C. Patrick Phillips  
Assistant City Attorneys  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2009-05973

Dear Ms. Byles and Mr. Phillips:

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# 342025 (Fort Worth Request Nos. 2048-09 and 2439-09).

The City of Fort Worth (the "city") received two requests for a specific incident report. You claim that the submitted 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 552.108(a) 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, 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 id.* §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted report relates to a pending criminal prosecution. Based upon this representation, we conclude that release of the submitted 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). Thus, section 552.108(a)(1) is applicable to the submitted report.

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*, and includes, among other things, the identification and description of the complainant and a detailed description of the offense. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note the requested incident report pertains to an alleged sexual assault where the complainant is the victim. Generally, the identity of a sexual assault victim must be withheld from the public under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Open Records Decision Nos. 393 (1983), 339 (1982). In this instance, while the alleged victim used a pseudonym, the narrative 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 generally be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, the United States Navy requestor is the victim's advocate and has a special right of access to information that must otherwise be withheld from public disclosure to protect the victim's privacy. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). Thus, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information, the city must withhold the portions of the narrative we have marked from the United States Marines requestor under section 552.101 in conjunction with common-law privacy.

As noted above, the requestors are representatives of the United States Marines and the United States Navy (collectively the "military"), and may have a right of access to some of the information being withheld under section 552.108. Section 411.089(a) of the Government Code provides that "[a] criminal justice agency is entitled to obtain from the [Department of Public Safety] any criminal history record information maintained by the [Department of Public Safety] about a person." *See* Gov't Code § 411.089(a). In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Gov't Code § 411.087(a)(2). We note that "criminal history record information" is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *See id.* § 411.082(2). Thus, the submitted information in this instance contains "criminal history record information." However, a criminal justice agency that receives criminal history record information from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, to the extent either of the requestors in this instance is a "criminal justice agency," that requestor is authorized to obtain criminal history record information from the city pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov't Code §§ 411.083(c), .087(a)(2).

A "criminal justice agency" is defined in part as "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice." Gov't Code § 411.082(3)(A). "Administration of criminal justice" has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines "administration of criminal justice" as the "performance of any of the following activities: detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information." Code Crim. Proc. art. 60.01(1).

In this case, the requestors are with the United States military. We cannot determine whether they are representatives of a criminal justice agency or whether they intend to use the criminal history record information for a criminal justice purpose. Consequently, if the city determines that any of the requestors are requesting the information on behalf of a criminal justice agency and intend to use the criminal history record information for a criminal justice purpose, we conclude that the city may make available to that requestor the criminal history record information from the documents, otherwise subject to section 552.108, that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, with the exception of basic information, the city may withhold the remaining information under section 552.108 of the Government Code.

However, if the city determines that the requestors are not requesting the information on behalf of a criminal justice agency or do not intend to use the criminal history record information for a criminal justice purpose, then the city may withhold the submitted information, with the exception of basic information, under section 552.108 of the Government Code. *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (finding

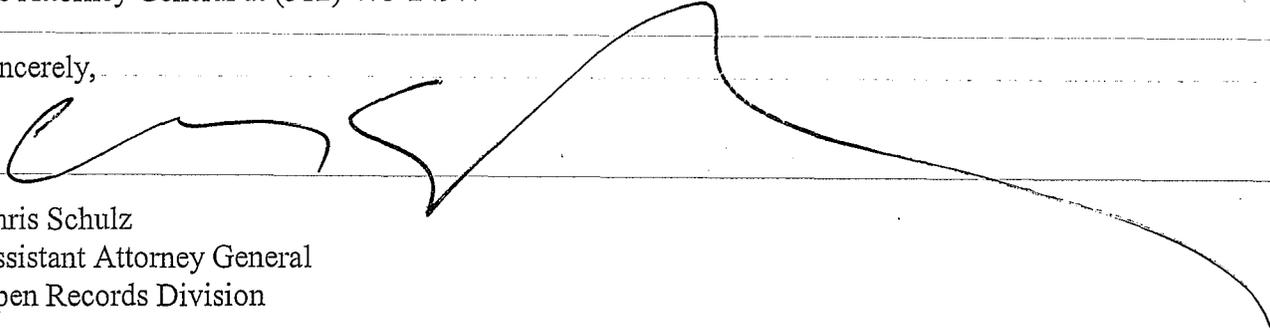
interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986); *see also* Open Records Decision Nos. 655 (1997), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure), 440 at 2 (1986) (construing predecessor statute). In either case, the city must withhold the marked identifying information from the United States Marines requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, the city may withhold the submitted report under section 552.108 of the Government Code. The city must withhold the marked identifying information from the United States Marines requestor under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent that the requestors have a right of access to the criminal history record information in the report pursuant to subchapter F, Chapter 411 of the Government Code, the requestors are authorized to obtain that information in accordance with that chapter.

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 information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 342025

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)