



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2009

Mr. Harold Willard
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2009-07173

Dear Mr. Willard:

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# 344208.

The Lubbock Police Department (the "department") received a request for a specified police report. You claim 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 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. In this instance, you state the submitted information pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on this representation, we conclude that section 552.108(a)(2) is applicable to the submitted information.

However, 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*. The department must release basic information under section 552.108(c), even if the information does not

literally appear on the front page of an offense or arrest report. We note that basic information includes the identity of the complainant and a detailed description of the offense. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). However, because the submitted information pertains to an alleged sexual assault, you argue the basic information must be withheld under section 552.101 of the Government Code and common-law privacy.¹

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 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. In Open Records Decision No. 393 (1983), this office concluded that information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983); see Open Records Decision No. 339 (1982); see also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). However, in instances of sexual assault, where it is demonstrated that the requestor knows the identity of the victim, the entire report must be withheld to protect the victim's privacy. Here, although you seek to withhold the basic information in its entirety, you have not demonstrated, nor does the report reflect, a situation in which the entirety of the basic information must be withheld on the basis of common-law privacy. Furthermore, while the department would ordinarily be required to withhold the sexual assault victim's identifying information on the basis of common-law privacy, in this instance the victim is identified by a pseudonym. Therefore, the department may not withhold any of the basic information under section 552.101 on the basis of common-law privacy. 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)(2).

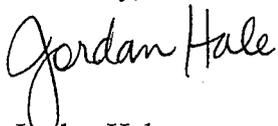
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses the doctrine of common-law privacy. See Gov't Code § 552.101.

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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 344208

Enc. Submitted documents

cc: Requestor
(w/o enclosures)