



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 14, 2009

Ms. Sylvia McClellan
Assistant City Attorney
City of Dallas
Criminal Law and Police Section
1400 South Lamar
Dallas, Texas 75215

OR2009-09687

Dear Ms. McClellan:

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# 349051 (DPD Request Number: 2009-3596).

The Dallas Police Department (the "department") received a request for report number 117490-W involving a named individual. 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 552.101 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 common-law privacy and excepts from disclosure private facts about an individual. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information is excepted from required public disclosure by a common-law right of privacy if the information (1) 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.*, 540 S.W.2d 668.

In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information,

the governmental body was required to withhold the entire report. 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); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

In this instance, the requestor knows the identity of the alleged victim of sexual assault. Thus, withholding only the identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, the submitted report would ordinarily be withheld in its entirety under section 552.101 in conjunction with common-law privacy. We note, however, that the requestor may be the authorized representative of the alleged victim. Section 552.023 of the Government Code provides that a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(b). Therefore, if the requestor is not the authorized representative of the alleged victim, then the department must withhold the submitted report in its entirety pursuant to section 552.101 in conjunction with common law privacy. If the requestor is the authorized representative of the alleged victim, she has a right of access to the submitted report under section 552.023 of the Government Code, and the information may not be withheld pursuant to common law privacy. To the extent the requestor has a special right of access to the submitted report, we address your remaining argument.

Section 552.108(a)(1) 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal case. Based on your representations and our review of the information at issue, we conclude that the release of this report 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).

We note, however, that 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87. The department must release basic information, including the complainant's identifying information and a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. Open Records Decision

No. 127 (1976).¹ The department may withhold the remaining information, under section 552.108(a)(1).

In summary, if the requestor is not the authorized representative of the victim listed in the submitted report, the department must withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with common law privacy. If the requestor is the victim's authorized representative, then, except for basic information, the department may withhold the submitted report under section 552.108(a)(1) of the Government Code.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/rl

Ref: ID# 349051

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note that because this requestor would have a special right of access to the complainant's identifying information from the basic information in this instance, if the department receives another request for this report from a person who does not have a special right of access to this information, the department should resubmit this same information and request another decision from this office. See Gov't Code §§ 552.023, 552.301(a), .302; Open Records Decision No. 673 (2001).