



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 28, 2009

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2009-10393

Dear Mr. Griffith:

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# 350322.

The McKinney Police Department (the "department"), which you represent, received a request for information pertaining to incident report no. 08-064607. 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)(2) 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 it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. 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 that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the submitted information is related to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on your representation and our review of the

submitted information, we conclude that section 552.108(a)(2) is applicable to the submitted information.

We note 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 Publishing 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). See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information includes the identification and description of the complainant. *Id.* In this instance, the submitted information involves a sexual assault and a portion of the basic information is protected by common-law privacy, which is encompassed by section 552.101 of the Government Code.¹ Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information that either identifies or tends to identify a victim of sexual assault must be withheld under common-law privacy. See Open Records Decision Nos. 393 (1983), 339 (1982). 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, that this is a situation in which the entirety of the basic information must be withheld on the basis of common-law privacy. Accordingly, the department must withhold the victim's identifying information in the basic information, which we have marked, under section 552.101 in conjunction with common-law privacy. As you have not demonstrated that the remaining basic information is highly intimate or embarrassing and not of legitimate public interest, it may not be withheld under section 552.101 in conjunction with common-law privacy. As you raise no further exceptions against disclosure, the remaining information must be released.

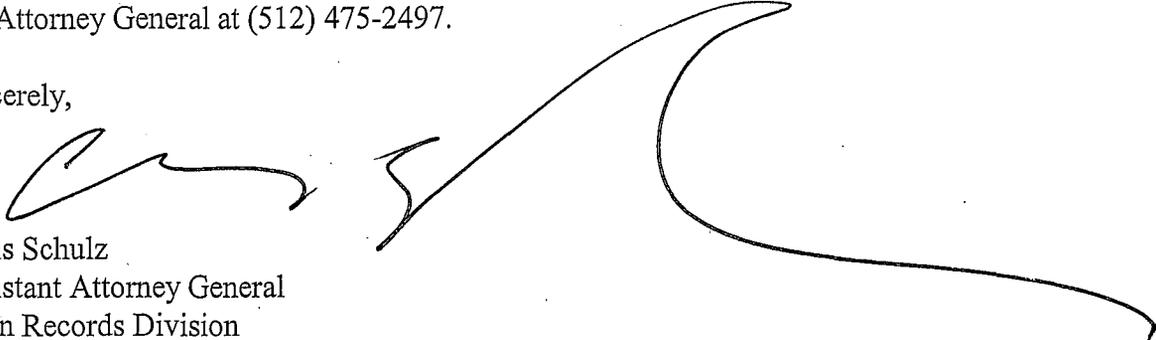
In summary, with the exception of basic information, the department may withhold the submitted report under section 552.108(a)(2) of the Government Code. In releasing basic information, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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.

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

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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 350322

Enc. Submitted documents

cc: Requestor
(w/o enclosures)