



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2009

Chief Don Hatcher
City of Leander Police Department
705 Leander Drive
Leander, Texas 78641

OR2009-10512

Dear Chief Hatcher:

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# 355361.

The Leander Police Department (the "department") received a request for information pertaining to a specified case. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains documents filed with a court, which are expressly public under section 552.022(a)(17) of the Government Code. *See Gov't Code* § 552.022(a)(17). Such information must be released unless it is expressly confidential under "other law." You claim the court-filed documents are excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108).* Therefore, the department may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. We note, that while you also raise section 552.101 in conjunction with common-law privacy for the court-filed

¹Although you cite section 552.101 for your argument to withhold social security numbers, we note section 552.147 of the Government Code is the proper exception for this type of information.

documents, information that has been filed with a court is not protected by common-law privacy.² See *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, the department may not withhold the court-filed documents based on section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions against their disclosure, the court-filed documents must be released.

We now address your argument under section 552.108 of the Government Code for the remaining information that is not subject to section 552.022. Section 552.108 of the Government Code excepts from public 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.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue pertains to a pending criminal investigation. Based on your representations and our review, we conclude that section 552.108(a)(1) is applicable in this instance. 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 that 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). Basic information refers to the information held to be public in *Houston Chronicle* and includes, among other things, a detailed description of the offense and the identification and description of the complainant. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note the requested information 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). Here, although you seek to withhold the basic information in its entirety, the requestor in this instance is the legal representative of the victim of the alleged sexual assault and has a special right of access to information that must otherwise be withheld from public disclosure to protect the victim’s privacy.³ See Gov’t Code § 552.023(b) (governmental body

²Section 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 the doctrine of common-law privacy.

³Therefore, should the department receive another request for this same information from a person who would not have a special right of access to it, the department should resubmit the same information and request another ruling from this office.

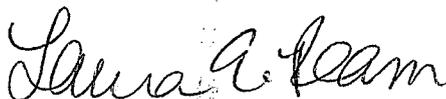
may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). Accordingly, with the exception of basic information, which must be released to this requestor, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.⁴

In summary, the department must release the court-filed documents we have marked that are subject to section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the department may withhold the remaining information 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/eeg

Ref: ID# 355361

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴As our ruling is dispositive, we need not address your remaining arguments against the disclosure of portions of the remaining information.