



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

~~September 15, 2009~~

Ms. Maria E. Miller
Dallas County Community College District
Legal Department
1601 South Lamar, Suite 208
Dallas, Texas 75215-1816

OR2009-13033

Dear Ms. Miller:

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# 359194.

The Brookhaven College Police Department of the Dallas County Community College District (the "district") received two requests for specified offense reports.¹ You state some of the requested information has been released, but claim some of 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the requestor's assertion that the district failed to comply with section 552.301(d) of the Government Code, which provides as follows:

A governmental body that requests an attorney general decision under Subsection (a) must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request:

¹You inform us the district received the requests on August 3, 2009.

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

Gov't Code § 552.301(d). The district received the request for information on August 3, 2009; thus, the 10-business-day deadline to provide information pursuant to section 552.301(d) was August 17, 2009. The requestor states the district informed the requestor on August 7, 2009, that the district intended to request a ruling to withhold the information at issue. *See id.* § 552.301(d)(1). However, the requestor also asserts the district did not send the requestor a copy of the district's request for a ruling until August 21, 2009. *See id.* § 552.301(d)(2).

The district's request for a ruling is dated August 14, 2009, but postmarked August 17, 2009. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). In response to a request for information made by this office to the district pursuant to section 552.303 of the Government Code, you inform us "[o]n August 14, 2009, I wrote to the Attorney General's office seeking an opinion and copied [the requestor]. I mailed [the requestor's] letter the same date I mailed the letter to the Attorney General, which was August 14, 2009."

The determination of the date that the district sent the requestor a copy of the request for a ruling is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1990). The district represents that it mailed the requestor a copy of the request for a ruling on August 14, 2009, the same day that it mailed the request for a ruling to this office. We note the request for a ruling is postmarked August 17, 2009, the tenth business day after the district's receipt of the request for information. Thus, we conclude the district complied with the procedural requirements of section 552.301(d). We, therefore, address the district's arguments under section 552.108 of the Government Code.

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.” 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* Gov’t Code §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report number 200900718 relates to a pending criminal investigation. Based on this representation, we conclude that the release of this 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. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we agree the district may withhold the information you have highlighted in yellow in incident report number 200900718 under section 552.108(a)(1).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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. You assert incident report number 2009000665 pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to the information you have highlighted in yellow in this incident report.

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). 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. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976). Basic information includes the identification and description of the complainant. Open Records Decision No. 127 (1976). Some of the information you have marked in incident report number 2009000665, including the information pertaining to the complainants, consists of basic information. Thus, with the exception of the basic information, the district may withhold the information you have highlighted in yellow in incident report number 2009000665 under section 552.108(a)(2).

You assert the identifying information of the complainants in incident report number 2009000665 is excepted under section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses the doctrine of common-law privacy, which 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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to 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. Information tending to identify a sexual assault victim is private and must be withheld. *Id.*; Open Records Decision Nos. 393 (1983), 339 (1982).

Incident report number 2009000655 pertains to an incident of alleged indecent exposure. We do not believe the complainants' identifying information in this incident report is intimate or embarrassing; therefore, the district may not withhold this information under section 552.101 on that ground. However, incident report number 200900718 contains medical information that is intimate and embarrassing, and of no legitimate concern to the public; therefore, the district must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy.

To conclude, the district must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. With the exception of basic information, which the district must release, the district may withhold the information highlighted in yellow under section 552.108 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, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/cc

Ref: ID# 359194

Enc. Submitted documents

cc: Requestor
(w/o enclosures)
