



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 30, 2009

Ms. Marie Feutz  
City Secretary  
City of Leon Valley  
6400 El Verde Road  
Leon Valley, Texas 78238

OR2009-13719

Dear Ms. Feutz:

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# 356808.

The City of Leon Valley (the "city") received a request for a specified incident report. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.132 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's procedural obligations under the Act. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply not later than the tenth business day after receiving the request. *See* Gov't Code § 552.301(a), (b). You inform us that the city received the request for information on July 8, 2009. Thus, the city's deadline under section 552.301(b) was July 22. However, the envelope in which you submitted your request for our decision is postmarked July 24. Thus, the city has failed to comply with the requirements of section 552.301.

A governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort

Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 is a discretionary exception to disclosure that a governmental body may waive. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). However, the need of a governmental body, other than the agency that is seeking an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure. Open Records Decision No. 586 (1991). You inform us, and provide a letter stating, that the Bexar County District Attorney's Office (the "district attorney") asserts a law enforcement interest in the submitted information under section 552.108. Based on this representation, we will consider the district attorney's claim under section 552.108. We further note that sections 552.101, 552.130, and 552.132 can provide compelling reasons for non-disclosure; therefore, we will consider the city's arguments under these exceptions.

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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us, and provide a representation from the district attorney stating that the district attorney objects to the release of the information at issue because its release could hinder the ongoing investigation and prosecution of the case. *See* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). Based on this representation and our review, we conclude the release of the submitted 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. Civ. 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). Thus, section 552.108(a)(1) is applicable to the submitted information.

We note 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). Such basic front-page information refers to the information held to be public in *Houston Chronicle*, and includes, among other things, the identification and description of the complainant and a detailed description of the offense. *See also* Open Records Decision No. 127 (1976) (summarizing

types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, as the submitted report pertains to an alleged sexual assault, certain basic information from the report is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>1</sup>

Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which excepts from public disclosure private information about an individual if the information (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 or 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982) (sexual assault victim has common-law privacy interest that prevents disclosure of information that would identify the victim). Upon review, we conclude the city must withhold the alleged sexual assault victim's identifying information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we find that none of the remaining information is confidential under common-law privacy, and the city may not withhold any of it on this basis.

Next, you assert some of the remaining basic information is excepted from disclosure under section 552.132 of the Government Code, which provides in relevant part:

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

- (1) the name, social security number, address, or telephone number of a crime victim or claimant; or
- (2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

Gov't Code § 552.132(b). The submitted information is not held by the crime victim's compensation division of this office; therefore, section 552.132(b) is not applicable to this information. We therefore conclude that the city may not withhold any portion of the remaining information under section 552.132 of the Government Code.

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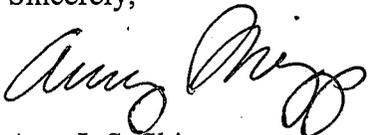
<sup>1</sup>Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

In summary, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>2</sup> In releasing the basic information, however, the city must withhold the alleged sexual assault victim's identifying information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The remaining basic information must be released to the requestor.<sup>3</sup>

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](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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/rl

Ref: ID# 356808

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>2</sup> As our ruling is dispositive, we do not address your remaining argument against disclosure.

<sup>3</sup> We note that basic information includes an arrestee's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.