



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-18060

Dear Mr. Phillips:

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# 364911 (City of Fort Worth Request No. 5881-09).

The City of Fort Worth (the "city") received a request for two specified offense reports. You state that you have redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued by this office in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also state that you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You claim 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 received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.*

¹We note that 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. Gov't Code § 552.147.

§ 552.101. Section 552.101 encompasses the doctrine of common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and 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. *See* 540 S.W.2d at 683. Generally, only information that either identifies or tends to identify a victim of sexual assault or another sex-related offense must be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when this identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decisions Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

Report number 08-43411 relates to an alleged sexual assault. In this instance, the submitted information indicates the requestor knows the identity of the alleged sexual assault victim listed in the report. Thus, withholding only the victim's identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, to protect the victim's privacy, the city must withhold report number 08-43411 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

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 state report number 08-13360 relates to a pending criminal prosecution. Based on your representation and our review, we determine 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). Thus, we find section 552.108(a)(1) is applicable to this information.

However, we note 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 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public

by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold report number 08-13360 under section 552.108(a)(1) of the Government Code.

We note the requestor asserts he has a special right of access to the submitted information. Under section 552.023, a person has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person's privacy interests. Gov't Code § 552.023(a). However, a requestor does not have a right of access under section 552.023 to information that is protected from public disclosure by a law that is not based exclusively on the privacy right of the requestor or his client. *Id.* § 552.023(b). In this instance, section 552.101 in conjunction with common-law privacy protects the privacy rights of other individuals in report number 08-43411 and not that of the requestor or his client. Additionally, report number 08-13360 may be withheld under section 552.108, which protects law enforcement interests rather than privacy rights. Therefore, section 552.023 does not provide the requestor a special right of access to the information at issue.

The requestor also claims the submitted information may be released to him pursuant to the intergovernmental transfer doctrine. This office has concluded information ordinarily may be transferred between governmental bodies that are subject to the Act without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinions H-836 (1976), H-242, M-713; Open Records Decision Nos. 655, 414 (1984). In Open Records Decision No. 650 (1996), this office determined that a governmental body may not disclose information that is confidential by law to a federal agency absent a federal law requiring the disclosure of the confidential information. *See* Open Records Decision No. 650 at 3 (1996) (policy supporting interagency exchange of information is absent when a federal agency requests information that is not required by law to be disclosed to it, since the state cannot effectively insure that the federal agency will maintain the confidentiality of the information); *see also* Attorney General Opinions H-836 (1976), H-242 (1974) (state may not release information made confidential by statute, unless some other law requires its disclosure). The requestor does not state, and the request does not reflect, that a federal law requires the disclosure of report number 08-43411 in this case. Consequently, we determine that the city is not authorized to release report number 08-43411 to the requestor pursuant to an intergovernmental transfer. Further, the Federal Public Defender's Office is not an agency subject to the Act. Accordingly, the intergovernmental transfer doctrine also does not authorize release of report number 08-13360 to this requestor. We note, however, pursuant to section 552.007 the city has the discretion to release all or part of report number 08-13360 that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the city must withhold report number 08-43411 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the city may withhold report number 08-13360 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, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 364911

Enc. Submitted documents

cc: Requestor
(w/o enclosures)