



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2011

Ms. Michelle L. Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2011-01754

Dear Ms. Villarreal:

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# 408091 (ORR# LGL 10-1635).

The Waco Police Department (the "department") received a request for a specified offense report. 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.

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 section encompasses common-law privacy and excepts from disclosure private facts about an individual. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Information is excepted from required public disclosure by a common-law right of privacy if the information (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. *Id.* at 685.

The submitted information relates to a sexual assault. In Open Records Decision No. 393 (1983), this office concluded generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably

intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). Further, in those instances where it is demonstrated the requestor knows the identity of the victim, the entire report must be withheld to protect the victim's privacy. You argue the entire report should be withheld on the basis of common-law privacy to protect the victim's identity. However, we find you have not sufficiently demonstrated the requestor knows the victim's identity. Thus, you have not demonstrated the entire report must be withheld on the basis of common-law privacy.

We now turn to your argument under section 552.108 of the Government Code for the submitted information. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) 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 this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and have provided a statement showing, the submitted information relates to an active case that is pending prosecution. Based upon these representations, we conclude release of the information at issue will 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) (court delineates law enforcement interests that are present in active cases); *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find section 552.108(a)(1) is applicable to the submitted information.

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*, and includes the identification and description of the complainant. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). As previously noted, information that identifies a sexual assault victim must be withheld to protect the victim's privacy. *See* ORD 393. Accordingly, the department must withhold the identifying information of the complainant, who is the victim in this instance, under section 552.101 of the Government Code in conjunction with common-law privacy. Thus, with the exception of basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing the basic information, the department must withhold the complainant's identifying information, which 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.

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,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tf

Ref: ID# 408091

Enc. Submitted documents

c: Requestor
(w/o enclosures)