



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 14, 2011

Ms. Stephanie M. Berry  
Assistant City Attorney  
City of Denton  
215 East McKinney  
Denton, Texas 76201

OR2011-08382

Dear Ms. Berry:

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# 420505.

The Denton Police Department (the "department") received a request for all complaints, incident reports, arrest records, statements, and 911 calls regarding 4 specified incidents. You state some information is being released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

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 must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibits B, C, and D relate to pending criminal investigations. Based on your representation and our review, we conclude release of this information would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law

enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) applies to Exhibits B, C, and D.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). You state Exhibit E relates to a criminal investigation that did not conclude in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) applies to Exhibit E.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes, among other items, the identity and description of the complainant. *See* ORD 127 at 3-4. In this instance the complainants in Exhibits B and C are alleged sexual assault victims. You assert the identifying information of these complainants is protected by section 552.101 of the Government Code.

Section 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 common-law right to privacy, which protects information if it (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). Common-law privacy protects the identity of the victim of an alleged sexual assault. *See id.* at 683; *see also* Open Records Decision Nos. 393 (1983), 339 (1982). Accordingly, when releasing basic information from Exhibits B and C, the department must withhold any identifying information of the alleged sexual assault victims, which we have marked, under section 552.101 in conjunction with common-law privacy. *See* Open Records Decision Nos. 393 (1983), 339. The remaining basic information for Exhibits B-E must be released. The city may withhold the remaining information in Exhibits B-D under section 552.108(a)(1) and in Exhibit E under section 552.108(a)(2).<sup>1</sup>

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<sup>1</sup> As our ruling is dispositive, we do not address your remaining arguments against disclosure, except to note section 552.103 does not except from disclosure the basic information found to be public in *Houston Chronicle*. *See* Open Records Decision No. 597 (1991).

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/bs

Ref: ID # 420505

Enc. Submitted documents

c: Requestor  
(w/o enclosures)