



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2014

Ms. J. Diaz
Assistant City Attorney
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2014-06516

Dear Ms. Diaz:

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# 520313 (DPD ORR# 2014-01238 and 2014-01239.)

The Dallas Police Department (the "department") received a request for information pertaining to incident report number 0281786-A. You claim the requested information is exempted from disclosure under sections 552.101, 552.108, and 552.1175 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.108(a)(1) of the Government Code exempts 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.*

¹Although you raise section 552.117 of the Government Code, we note section 552.1175 of the Government Code is the proper exception to raise in this instance because the department does not hold the information at issue in an employment capacity.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

§§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal investigation. Based upon this representation and our review, we find release of the information at issue 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) (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).

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*. *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*). The department must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. Thus, with the exception of basic information, you may withhold the submitted information under section 552.108(a)(1).

You claim portions of the remaining information are protected by common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The identity of the victim of an alleged sexual assault is confidential under common-law privacy. *See id.*; *see also* Open Records Decision Nos. 393 (1983), 339 (1982).

In this instance, the complainant, who is the alleged sexual assault victim, is identified in the basic information using a pseudonym, and the basic information contains no other information that tends to identify the alleged sexual assault victim. We find the use of a pseudonym sufficiently protects the complainant's privacy in this case. Accordingly, the department may not withhold any of the basic information under section 552.101 in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "federal judges and state judges as defined by Section 13.0021, Election Code[.]" *Id.* § 552.1175(a)(10). Some of the remaining information pertains to an individual who may be subject to section 552.1175. Thus, to the extent the information you have marked consists of the home address of an individual subject to section 552.1175(a), and the individual at issue elects to

restrict access to his information in accordance with section 552.1175(b), the department must withhold the information you have marked under section 552.1175 of the Government Code. If the individual whose information you have marked is not subject to section 552.1175(a) or no election is made, the department may not withhold this information under section 552.1175 of the Government Code.

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. To the extent the information you have marked consists of the home address of an individual subject to section 552.1175(a) of the Government Code, and the individual at issue elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information you have marked under section 552.1175 of the Government Code. The remaining basic information must be released.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 520313

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)