



February 20, 2015

Mr. John Saenz
Crime Records Office
City of McAllen
P.O. Box 220
McAllen, Texas 78501

OR2015-03416

Dear Mr. Saenz:

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# 554428.

The McAllen Police Department (the "department") received a request for a specified incident report. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim 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 claiming section 552.108(a)(1) 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 the submitted information pertains to an active criminal investigation. Based on your representation and our review, we find the department has demonstrated 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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). This information includes, but is not limited to, the identity of the complainant. See ORD 127 at 4. Accordingly, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ Gov’t Code § 552.101. Section 552.101 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82.

Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983); *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). Accordingly, the department must withhold the complainant’s identifying information from the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

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. In releasing basic information, the department must withhold the complainant’s identifying information 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.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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# 554428

Enc. Submitted documents

c: Requestor
(w/o enclosures)