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ATTORNEY GENERAL OF TEXAS

October 13, 2015

Ms. Linda A. Samples
Assistant City Attorney
Office of the City Attorney
The City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2015-21455

Dear Ms. Samples:

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# 582988 (El Paso Case# 15-1026-6464).

The El Paso Police Department (the "department") received a request for family violence, attempted suicide, and break-in reports involving a named individual and the requestor during a specified period. You state the department has released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 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. Section 552.101 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 established. *Id.* at 681–82. The type of information considered highly intimate or 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. *Id.* at 683. Generally, only 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. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decision Nos. 393, 339; *see also* ORD 440 (detailed descriptions of serious sexual offenses must be withheld). Upon review, we find the requestor knows the identity of an alleged sexual assault victim listed in the information at issue. Accordingly, to protect the victim's privacy, the department must withhold the entirety of the report we indicated 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(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 information concerning report number 13-296201 relates to a pending criminal prosecution and release of the information would interfere with the detection, investigation, and 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 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). Based on these representations, we conclude section 552.108(a)(1) of the Government Code is applicable to report number 13-296201.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than 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 concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2–3 (1986). You state report numbers 08-078336, 08-154247, 09-312187, and 14-347110 have concluded and did not result in a conviction or deferred adjudication. Based on these representations, we conclude section 552.108(a)(2) of the Government Code is applicable to report numbers 08-078336, 08-154247, 09-312187, and 14-347110.

However, section 552.108 does not except from disclosure basic information about a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to, a sufficient portion of the narrative to include a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold report number 13-296201 under section 552.108(a)(1) of the Government

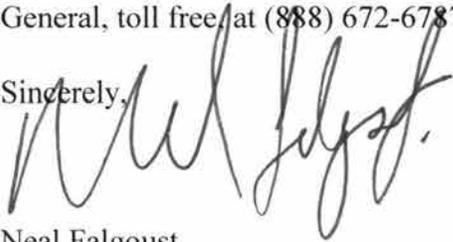
Code¹ and report numbers 08-078336, 08-154247, 09-312187, and 14-347110 under section 552.108(a)(2) of the Government Code.

In summary, the department must withhold the entirety of the report we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the department may withhold report number 13-296201 under section 552.108(a)(1) of the Government Code and report numbers 08-078336, 08-154247, 09-312187, and 14-347110 under section 552.108(a)(2) 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.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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

Ref: ID# 582988

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we do not address your other argument against disclosure, except to note that, generally, basic information held to be public in *Houston Chronicle* is not excepted from public disclosure under section 552.103 of the Government Code. See Open Records Decision No. 597 (1991).