



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 26, 2016

Ms. Paige Mebane  
Assistant City Attorney  
Office of the City Attorney  
The City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2016-09307

Dear Ms. Mebane:

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# 607344 (City PIR Nos. W049207, W049230, W049409, and W049456).

The City of Fort Worth and the Fort Worth Police Department (collectively the "city") received four requests from different requestors for information related to a specified incident. 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (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). Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which 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 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identities of witnesses to and victims of sexual harassment are highly intimate or embarrassing information and public does not have legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The first and third requestors in this case know the identity of the alleged victim. We believe that, in this instance, withholding only identifying information from these requestors would not preserve the victim’s common-law right to privacy. We conclude, therefore, the city must withhold the submitted information in its entirety from the first and third requestors under section 552.101 in conjunction with common-law privacy.<sup>1</sup> However, we have no indication the second and fourth requestors know the identity of the victim. Therefore, the city may not withhold the entirety of the submitted information from these requestors on this basis. Accordingly, we will address your remaining argument against disclosure of the submitted information to the second and fourth requestors.

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, and provide documentation demonstrating, the submitted information relates to a pending criminal investigation and prosecution and release of the information would interfere with that investigation and prosecution. *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 and our review, we conclude section 552.108(a)(1) of the Government Code is applicable to the submitted information.

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* and includes the identity 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). Thus, with the exception of the basic front-page offense and arrest information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code from the second and fourth requestors. Because the report at issue relates to alleged sexual assault, the city is generally required to withhold the identity of the victim under section 552.101 of the Government Code in conjunction with common-law privacy. *See Indus. Found.*, 540 S.W.2d at 685; ORD 393 (1983) (concluding information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information to these requestors.

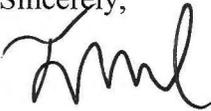
privacy). However, we note the complainant at issue, who is also the alleged victim, is identified only by a pseudonym. The use of a pseudonym sufficiently protects this complainant's identity within those documents. Thus, the city may not withhold any portion of the basic information under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold the submitted information in its entirety from the first and third requestors under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the basic front-page offense and arrest information, which must be released to the second and fourth requestors, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code from the second and fourth requestors.

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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 607344

Enc. Submitted documents

c: 4 Requestors  
(w/o enclosures)