



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 28, 1996

Ms. Lan P. Nguyen  
Legal Department  
Assistant City Attorney  
City of Houston  
P. O. Box 1562  
Houston, Texas 77251-1562

OR96-1950

Dear Ms. Nguyen:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101522.

The City of Houston Police Department (the "department"), which your office represents, received a request for copies of two incident reports, identified as incident numbers 37781495 and 67792196. You claim that 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 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Since the records at issue come within the purview of section 552.108, we conclude that most of the information at issue may be withheld under this section.<sup>1</sup>

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<sup>1</sup>Although section 552.108 authorizes you to withhold the requested information, we note that you may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

We note, however, that information normally found on the front page of an offense report is generally considered public.<sup>2</sup> *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). We therefore conclude that, except for front page offense report information, section 552.108 excepts the requested records from required public disclosure.

Although you have not raised section 552.101 as an applicable exception, we note that some information revealed in the submitted records and subject to disclosure as front page offense report information is excepted from required public disclosure under constitutional or common-law privacy. The Office of the Attorney General will raise section 552.101 on behalf of a governmental body when necessary to protect third-party interests. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Therefore, we next consider whether section 552.101 of the Government Code excepts some of the submitted information, not covered by section 552.108, from required public disclosure.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. The type of information considered intimate and 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. 540 S.W.2d at 683; *See* Open Records Decision Nos. 339 (1982), 205 (1978). Additionally, this office has found that the following types of information are excepted from required public disclosure under constitutional<sup>3</sup> or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records

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<sup>2</sup>The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*. For your convenience, we have attached a list of the types of information the city must release from the submitted record.

<sup>3</sup>Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The scope of information protected under constitutional privacy is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Consequently, to the extent the front page offense report information includes information subject to privacy, the department must withhold the information.<sup>4</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/ch

Ref.: ID# 101522

Enclosures: Submitted documents  
Summary of Open Records Decision No. 127 (1976)

cc: Mr. Greg McCormack  
C-Mack Services  
10333 NW Fwy, Suite 216  
Houston, Texas 77092  
(w/ Summary of Open Records Decision No. 127 (1976))

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<sup>4</sup>We note that some of the information in the submitted reports is confidential. *See* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). For your convenience, we have marked some information which our office considers to be confidential and should be withheld pursuant to section 552.101 of the Government Code.