



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 20, 1997

Ms. Tracy B. Calabrese  
Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR97-1155

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 105728.

The City of Houston (the "city") received requests from two individuals for a variety of information regarding the Public Integrity Review Group ("PIRG") investigation reports concerning a particular individual. 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). You inform us that the investigation into the allegations are still under investigation. Specifically, you assert that the "Houston Police Department (HPD) advises that the requested report is part of an investigative file, presently in custody of the HPD." You have also provided to our office a letter from an investigative police officer, which states that "this investigation is in its earliest stages and will require a compilation of reports concerning business records and witness statements. . . . The release of any part of the investigation findings would seriously impair any further investigation." 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.

We note, however, that information normally found on the front page of an offense report, including a detailed description of the offense, is generally considered public.<sup>1</sup> *Houston Chronicle Publ'g 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). Thus, the city must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the report. Therefore, except for front page offense report information, section 552.108 of the Government Code excepts the requested record from required public disclosure. Although section 552.108 authorizes the city to withhold the remaining information from disclosure, the city may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

Although you have not raised section 552.101 as an applicable exception, we note that some information revealed in the submitted records, and otherwise subject to disclosure as front page offense report information pursuant to *Houston Chronicle* is excepted from required public disclosure under constitutional or common-law privacy. Therefore, we must next address whether section 552.101 of the Government Code excepts some of the submitted information, not covered by section 552.108, from required public disclosure.<sup>2</sup>

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses both common-law and constitutional privacy. 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.

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<sup>1</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*.

<sup>2</sup>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).

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 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). Specifically, when the information relates to a sexual assault or other sex-related offense, any information which either identifies or tends to identify the victim must be withheld under the common-law right of privacy, in conjunction with section 552.101 of the Government Code. *See* Open Records Decision Nos. 339 (1982), 205 (1978). Consequently, to the extent the front page offense report information includes information subject to privacy, the city must withhold the information.

However, the right of privacy is personal to an individual. *See generally* Attorney General Opinion H-917 (1976); Open Records Decision No. 272 (1981). In this instance, some of the information excepted from disclosure pursuant to privacy concerns one of the requestors who is an alleged victim in one of the investigations at issue. We note that while the information about this particular requestor is not available to the public at large or the other requestor for this information, the individual requestor whose right of privacy is implicated by the request has a special right of access to it under section 552.023 of the Government Code.<sup>4</sup> *See* Open Records Decision No. 481 (1987). Accordingly, if the submitted records at issue contain any information subject to privacy regarding any person, other than the requestor who is entitled to information implicating her privacy, this information is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the common-law right to privacy.

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<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))

<sup>4</sup>Section 552.023 grants an individual or an individual's representative access to information that is otherwise excepted from required public disclosure based on a law that protects that individual's privacy interests. *See* Open Records Decision No. 587 (1991).

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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/rho

Ref.: ID# 105728

Enclosures: Submitted documents

cc: Mr. Jerry Urban  
Reporter  
Houston Chronicle  
P.O. Box 4260  
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(w/o enclosures)