



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 23, 1997

Mr. John Steiner  
Division Chief  
City of Austin  
Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546

OR97-1430

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 106834.

The City of Austin Police Department (the "city"), which your office represents, received a request for "[a]ny and all records, statements, and any other documents, pertaining to the investigation, arrest or prosecution of **Emanuel Hernandez.**" In response to the request, you submitted to this office for review a copy of the responsive records. You assert that the submitted information may be withheld from disclosure pursuant to section 552.108, and common-law privacy, as incorporated into section 552.101 of the Government Code. We have considered the exceptions 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 assert that the requested information relates to police investigation or prosecution of criminal allegations. Since the submitted records at issue come within the purview of section 552.108, we conclude that most of the information 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). 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.

We must next consider whether some of the information revealed in the submitted incident report and subject to disclosure as front page offense report information is excepted from required public disclosure under section 552.101. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses both common-law and constitutional privacy, as well as information protected by other statutes. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, 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). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. 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. Additionally, this office has found that the following types of information are excepted from required public disclosure under constitutional<sup>2</sup> or common-law privacy: some kinds of medical information

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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>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)).

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.

Finally, we consider whether the request for "records would also constitute a compilation of criminal history," as you contend. However, based on our reading of the request letter, the requestor appears to only seek information concerning a specific incident. Therefore, in this instance, we do not believe the requestor seeks a compilation of criminal history record information implicating an individual's right of privacy.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Sam Haddad". The signature is written in black ink and is positioned above the typed name and title.

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/rho

Ref.: ID# 106834

Enclosures: Submitted documents

cc: Ms. Wanda McMurtrey  
Records Department Manager  
Southwest Reporting & Video Service, Inc.  
909 Fannin Street, Suite #1630  
Houston, Texas 77010  
(w/o enclosures)