



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 12, 1998

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

OR98-0104

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111922.

The City of Austin Police Department (the "department") received a request for the offense report pertaining to a particular sexual assault. You contend that the requested offense report is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.108 of the Government Code provides in part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication

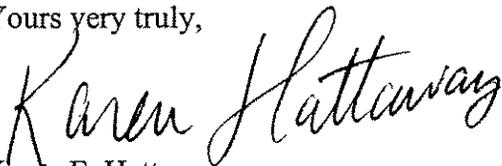
Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977).* In this instance, you have not stated that the requested offense report pertains to a pending criminal investigation or

prosecution so as to demonstrate that its release would interfere with the detection, investigation, or prosecution of crime. Nor have you demonstrated that the offense report relates to a criminal investigation that *concluded in a result* other than a conviction or deferred adjudication. See Gov't Code § 552.108(a)(2), (b)(2). Therefore, we conclude that the department may not withhold the offense report from disclosure under section 552.108.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses the common-law right to privacy. For information to be protected by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (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. In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify her/him. We have marked the information that the department must withhold under section 552.101 in order to protect the victim's privacy. The department must release the remaining information to the requestor.

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 any questions about this ruling, please contact our office.

Yours very truly,


Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 111922

Enclosures: Marked documents

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(w/o enclosures)