



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 23, 1998

Ms. Sara Fauls
City Attorney
City of Copperas Cove
P.O. Drawer 1449
Copperas Cove, Texas 76522

OR98-2480

Dear Ms. Fauls:

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# 118982.

The City of Copperas Cove (the "city") received a request for information on case number 98-2476. You contend that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information at issue.

Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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." You indicate that the investigation about which the requestor is seeking information did not result in conviction or deferred adjudication. You explain that "this alleged sexual assault was not presented to a Grand Jury by the District Attorney because of insufficient evidence for prosecution." Under these circumstances, we find that section 552.108(a)(2) is applicable to the requested information.

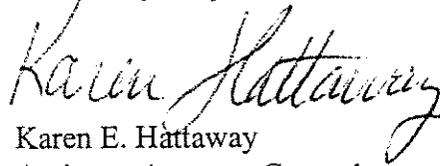
Nevertheless, information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). However, in cases of sexual assault, section 552.101 of the Government Code protects from public disclosure some information not generally protected by section 552.108. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The common-law right to

privacy, incorporated into the Open Records Act by section 552.101, protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982), we concluded that the common-law right to privacy protects the identity of a sexual assault victim.

Therefore, the city must withhold all information that identifies the alleged sexual assault victim under section 552.101 in conjunction with the common-law right to privacy, even though some of this information is generally considered front page offense report information under *Houston Chronicle*. The city must release all other front page offense report information in accordance with *Houston Chronicle*.¹ The city may withhold the remaining portions of the submitted documents from disclosure under section 552.108(a)(2).

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# 118982

Enclosures: Submitted documents

cc: Mr. Sean M. Morgan
Department of the Army
Alpha Company 2nd Battalion
1st Calvary Division
Fort Hood, Texas 76545
(w/o enclosures)

¹We note that the city must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report.