



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 12, 1998

Captain Robert Taylor
Amarillo Police Department
200 E 3rd
Amarillo, Texas 79101-1514

OR98-2690

Dear Captain Taylor:

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# 119444.

The Amarillo Police Department received a request for copies of records relating to a sexual assault that occurred on June 28, 1998. You contend that the requested documents are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.108(a)(1) excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. You state that the requested documents relate to a pending criminal investigation. Based upon this representation, we conclude that the release of the documents would interfere with the detection, investigation, or prosecution of crime. *See 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) (court delineates law enforcement interests that are present in active cases).

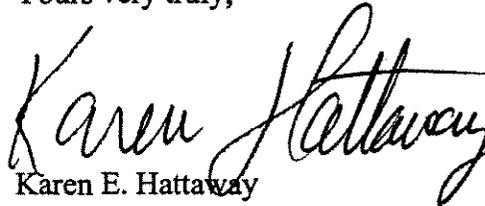
We note, however, that section 552.108 does not generally except from disclosure information normally found on the front page of an offense report. *See generally* Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976). Nevertheless, in cases of sexual assault, 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.

Ordinarily, you would be required to withhold information that identifies the victim of sexual assault under section 552.101 in conjunction with the common-law right to privacy, even though such information is generally considered front page offense report information under *Houston Chronicle*. However, it appears that in this case the requestor is the sexual assault victim's attorney, and therefore, has a special right of access to front page offense report information that identifies this victim. See Gov't Code § 552.023.¹ Therefore, you must release all of the front page offense report information to this requestor in accordance with *Houston Chronicle*. You may but are not required to withhold the remaining portions of the submitted documents from disclosure under section 552.108(a)(1).

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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

¹Section 552.023 provides in pertinent part:

(a) A person or a *person's authorized representative* has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

(b) A governmental body may not deny access to information to the person, *or the person's representative*, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

KEH/mjc

Ref: ID# 119444

Enclosures: Submitted documents

cc: Mr. Eric D. Dixon
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Portales, New Mexico 88130
(w/o enclosures)