

January 21, 1999



OFFICE OF THE  
ATTORNEY GENERAL  
STATE OF TEXAS

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JOHN CORNYN  
Attorney General

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P.O. Box 12548  
Austin, Texas  
78711-2548  
(512) 463-2100  
www.oag.state.tx.us

Mr. Richard Brown  
Assistant City Attorney  
Office of the City Attorney  
Municipal Building  
Dallas, Texas 75201

OR99-0186

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121260.

The Dallas Police Department received a request for all police reports or records relating to a specific incident involving alleged sexual assault on June 8, 1997. You claim that the requested information is excepted from required public disclosure by sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

You argue that the information may be withheld under section 552.108 of the Government Code. Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(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; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

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(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the exception applies. *See* Gov't Code §§ 552.108, .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the "requested information pertains to an ongoing [criminal] investigation and pending prosecution." The requestor, however, indicates that a grand jury has "no billed" the suspect in the alleged assault.<sup>1</sup> If the criminal case is still pending, we find that you have shown that the release of the requested information 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

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<sup>1</sup>We point out that if the charges against the suspect have been dropped, section 552.108 may still be applicable. The department has also raised section 552.108(a)(2) as an exception to disclosure. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. If the charges against the suspect resulted in a "no bill" and the case is no longer under investigation or pending prosecution, as the requestor indicates, the records could still be excepted from disclosure by section 552.108(a)(2).

cases); Open Records Decision No. 216 (1978). Thus, we conclude that the requested information may be withheld under section 552.108(a)(1).<sup>2</sup>

We note, however, that information normally found on the front page of an offense report is generally considered public. *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) (summarizing the types of information deemed public by *Houston Chronicle*). Thus, you 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. Gov't Code § 552.108(c); see *Houston Chronicle*, 531 S.W.2d at 187; cf. Open Records Decision No. 597 (1991) (basic information in an offense report generally may not be withheld under section 552.103).

You also argue that the name of the alleged victim in this case must be withheld based on a right of privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." In sexual assault cases, section 552.101 of the Government Code excepts from public disclosure certain information that is not normally excepted under section 552.108. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information may be withheld on the basis of common-law privacy. The doctrine of common-law privacy 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 Industrial 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 sexual assault victims have a common-law privacy interest which prevents disclosure of information that would identify them. See also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information). In this case, however, the requestor has provided this office with information that the alleged victim has filed a lawsuit identifying herself and many of the alleged details and facts of the assault. The requestor has provided a copy of the alleged victim's original complaint in that case. We do not believe that in this case you must withhold information that would identify the victim of the alleged sexual assault. See *Star Telegram, Inc. v. Doe*, 915 S.W.2d 471, 474-475 (Tex. 1995).

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<sup>2</sup>Because we make a determination under section 552.108 for the "narrative portions" of the requested information, we need not consider your additional arguments against disclosure for this information.

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,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB\nc

Ref: ID# 121260

Enclosures: Submitted documents

cc: Ms. Marybeth Krebs  
Attorney at Law  
200 Crescent Court, Suite 1500  
Dallas, Texas 75201  
(w/o enclosures)