



September 27, 1999

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
2014 Main, Room 501
Dallas, Texas 75201

OR99-2703

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127593.

The City of Dallas (the "city") received a request for information obtained from the city's incident report database. You claim that a portion of the requested information is excepted from disclosure under section 552.108 of the Government Code. You have supplied a representative sample of the information you seek to withhold.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You inform us that a portion of the requested information, including witness names, pertains to pending cases. We believe that the release of such information "would interfere with the

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

detection, investigation, or prosecution of crime.” However section 552.108 is inapplicable to “basic” information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). Thus, with the exception of the basic front page offense and arrest information, the department may withhold the requested information that relates to pending investigations or prosecutions from disclosure based on section 552.108(a)(1).

We note that the representative sample also includes the identity of a victim of sexual assault. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). Applying that standard, our office opined that the identities of victims of serious sexual offenses is confidential. Open Records Decision No. 339 (1982). Also, as “other information, such as the location of the crime, might furnish a basis for identification of the victim” such information is not subject to disclosure. *Id.* Thus, all such information is confidential and must be withheld.

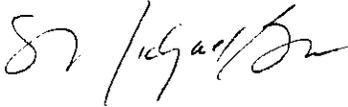
You contend that each page of the responsive information must be inspected and confidential information redacted manually, and therefore, the information cannot be provided in electronic medium as requested. Section 552.228(b) of the Government Code requires a governmental body to provide electronically stored information in the requested medium if it has the technological ability to do so without the purchase of software or hardware. Therefore, if information that is not excepted from disclosure can be provided in the requested electronic format, for example by deleting the excepted information, it must be so provided. If the city does not have the technological ability or the required hardware or software to provide the information in the requested medium, it shall provide the information on paper or on another medium acceptable to the requestor. Gov’t Code 552.228(c). Permissible charges for providing these records are determined by rules promulgated by the General Service Commission. Gov’t Code § 552.262. The applicable rules, including permitted charges for programming and other personnel time expended, are found at Sections 111.61 - 70 of title 1 of the Texas Administrative Code. The city may require the requestor to post a deposit or bond for payment of anticipated costs for the preparation of the information, as provided by Government Code section 552.263.

You note that the requestor seeks the information on a continuous basis. Because the Public Information Act only requires a governmental body to provide information that existed at the

time of a request, a governmental body need not comply with a standing request to provide information. Open Records Decision No. 476 (1987).

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.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 127593

Encl. Submitted documents

cc: Mr. Benjamin Lesser
APB News
161 Malden Lane
New York, New York 10035-4967
(w/o enclosures)