



March 1, 2000

Lieutenant Brad Lancaster
Amarillo Police Department
200 E. 3rd
Amarillo, Texas 79101-1514

OR2000-0827

Dear Lieutenant Lancaster:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132574.

The City of Amarillo Police Department (the "department") received a request for records and crime scene photos regarding file number 99-116254. You have submitted only the report to our office. We assume, therefore, that you have released the crime scene photos to the requestor. *See* Gov't Code §§ 552.301, .302. You claim that the 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 submitted information.

Section 552.108(a) excepts from public disclosure

[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . 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; or

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

The submitted information consists of an offense report involving separate criminal charges: assault and violation of a protective order. You seek to withhold the offense report because “the case has not been adjudicated, and therefore has not resulted in a conviction or deferred adjudication against any person.” This explanation does not meet your burden of establishing the applicability of section 552.108 in that it neither establishes that this case is pending for purposes of section 552.108(a)(1) nor that the case has come to a conclusion that did not result in a conviction or deferred adjudication for purposes of section 552.108(a)(2). Because this office has insufficient information to reach any conclusion regarding the pendency of an investigation or prosecution regarding the assault charges contained in the offense report, information related to the assault charges may not be withheld pursuant to section 552.108. However, after reviewing the supplemental report submitted to this office, it is apparent from the face of this document that the investigation of the violation of the protective order has concluded and that the charges have been dismissed by the prosecutor. We conclude, therefore, that the department may withhold the information contained in the report which relates to the violation of a protective order charge pursuant to section 552.108(a)(2).¹

You also contend that the submitted information is protected from public disclosure pursuant to section 552.101 of the Government Code. Section 552.101 protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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 it is of no legitimate concern to the public. *Id.* at 683-85.

The submitted offense report concerns an incident of alleged family violence. In Open Records Decision No. 611 (1992), this office concluded that common law privacy does not, as a matter of law, except all police records regarding violence among family members and that such determinations must be made on a case-by-case basis. We do not believe that the information is protected by common law privacy. Consequently, the department may not withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy.

¹We note, however, that 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).

We note, however, that the submitted information contains a social security number and drivers' license numbers. Pursuant to section 552.101 of the Government Code, the social security number in the report may be confidential if it was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(vii); *see* Open Records Decision No. 622 (1994). Furthermore, section 552.130 excepts information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state. Therefore, you must withhold the drivers' license numbers under section 552.130. We have marked the information that the department may withhold under section 552.108(a)(2) and must withhold under section 552.130 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Carla Gay Dickson".

Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ch

Ref: ID# 132574

Encl. Marked documents

cc: Ms. Mary Ann Varughese
6200 I-40 West
Amarillo, Texas 79106
(w/o enclosures)