



July 14, 2000

Ms. Elaine Hengen  
Assistant City Attorney  
Office of the City Attorney  
The City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2000-2667

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 136729.

The City of El Paso (the "city") received four separate requests for related information. Two of the requestors seek only a copy of case number 00-097140. Both of the requestors from the El Paso Times request the city's internal affairs investigation that relates to the above case number. Finally, one of the requestors from the El Paso Times seeks two additional internal affairs investigations, numbers CP00-021 and CP00-083.<sup>1</sup> You claim that portions of the information are excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the documents submitted for our review appear to have been filed with a court. Section 552.022(a)(17) of the Government Code states that information that is also contained in a public court record is not excepted from disclosure under the Act, unless confidential under other law. Moreover, documents filed with a court are generally

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<sup>1</sup>The city asserts that it has satisfied this requestor's request for CP00-021. Therefore, this ruling addresses the request for CP00-083 only.

considered public. *Star-Telegram, Inc. v. Doe*, 915 S.W.2d 471 (Tex. 1995); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). As such, you must release any and all submitted documents that have been filed with a court pursuant to section 552.022(a)(17).

Additionally, the documents submitted appear to contain a search warrant affidavit which, if executed, must be released. Code Crim. Proc. art. 18.01(b). Thus, if it has been executed, the search warrant affidavit must be released.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 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). Therefore, 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).

This office has found that, in general, section 552.101 does not except from public disclosure the names of crime victims. *See* Open Records Decision No. 409 at 2 (1984). However, we have concluded that the names of victims of sexual assault and child victims of sexual abuse and serious sexual offenses are excepted from public disclosure under section 552.101 and common law privacy grounds. *See* Open Records Decision No. 339 at 2 (1982). In the instant case, the police report pertains to a sexual assault in which a pseudonym is used in place of the alleged victim’s name. We believe that the requirements of common law privacy may be satisfied by redacting, prior to release, identifying information such as the victim’s name (if given), work information, the names of others such as family members through whom the victim could be identified, the victim’s and such other individuals’ addresses and telephone numbers, and the locations of the crimes if they coincide with the victim’s addresses or otherwise tend to specifically identify the victim. Please note that pseudonyms are not identifying information and therefore should be released. Therefore, with the exception of the pseudonym, you must redact from the documents that must be released any and all information that tends to identify the alleged victim. We have marked examples of the type of information the city must redact.

Additionally, you argue that the specific details of the assault are also protected under common law privacy. In Open Records Decision No. 393 (1983), this office concluded that in some circumstances, the victim’s identifying information can be so inextricably intertwined with the remainder of the report that it would be “unfeasible to attempt to separate the remainder and make it available,” thus requiring that the entire report be withheld. Open Records Decision No 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *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); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The city asserts that the identity of the alleged victim may have already been obtained by the media through other sources and, as such, the release of any information in this case would implicate the alleged victim's rights of privacy. However, given the speculative nature of this argument and the substantial public interest in criminal allegations made against public employees, we find that the submitted information may not be withheld in its entirety.

Section 552.108 of the Government Code provides in pertinent 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:

...

(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;

...

(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.

Thus, information may not be withheld under section 552.108(a)(2) unless the information relates to a criminal investigation or prosecution that concluded in a result other than a conviction or deferred adjudication. You inform this office that “[t]he case has now been completed and closed, as the arrestee is deceased[,]” and as such, “there was no conviction or deferred adjudication resulting from the investigation[.]” Consequently, you may withhold portions of the information submitted as Exhibit C, including any specific description of police vehicles used for undercover enforcement operations, under section 552.108(a)(2).

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, basic front page offense and arrest information must be released to the requestors. As noted above, victim identifiers must be withheld, even from release as basic information, under section 552.101.

We now address the documents contained in Exhibits D and G. In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the right of common law privacy to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

The city represents that the documents marked as Exhibits D and G reflect the "administrative investigation file" of an alleged sexual assault. We conclude that, in an administrative context, an investigation of an alleged sexual assault is analogous to an administrative sexual harassment investigation. Therefore, we will apply the rationale set forth in *Ellen* to the submitted information.<sup>2</sup> We conclude that the submitted documents do not contain an adequate summary of the administrative sexual assault investigation; therefore, the victim's and witnesses' statements contained within Exhibits D and G must be released under section 552.101 and *Ellen*. However, the city must withhold from those statements information that identifies the victim and those witnesses who were compelled to give statements as a condition of continued employment. We have marked those portions of Exhibits D and G that must be withheld from required public disclosure under section 552.101.

The city also asserts that some of the information submitted is excepted under section 552.117 of the Government Code. Section 552.117(2) requires the city to withhold the home address, telephone number, social security number, and family member information, of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, without regard to that officer's election under section 552.024. Therefore, you must redact the home addresses, telephone numbers, social security numbers, and family member information of all peace officers named in the submitted documents. As to the arrested officer, you must only redact such information in the context of his role as a "peace officer" and not as a "suspect." In other words, you must withhold section 552.117 information for the accused officer in Exhibits D and G, and release such information in Exhibit C. We have marked the submitted documents to indicate the information that is subject to section 552.117.

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<sup>2</sup>Additionally, we note that the documents themselves reveal that this was an investigation of violations of department policy. Therefore, section 552.108 is inapplicable to the documents submitted as Exhibits D and G. See *Ellen*, 840 S.W.2d at 526.

Section 159.002(b) of the Occupations Code protects from disclosure "[a] record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician." Some of the documents submitted to this office as Exhibit D are medical records, access to which is governed by provisions outside the Public Information Act. Medical records may only be released as provided by chapter 159 of the Occupations Code. Open Records Decision No. 598 (1991). The Occupations Code provides for both the confidentiality of medical records and certain statutory access requirements. *Id.* at 2. We have marked those documents in Exhibit D that fall within the protection of chapter 159 of the Occupations Code and must be withheld according to the provisions of that chapter.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold all Texas driver's license numbers, license plate numbers, and VIN numbers.

In summary, the city must release all documents that have been filed with a court pursuant to section 552.022(a)(17) of the Government Code, and any search warrant affidavits that have been executed. Exhibit C may be withheld under 552.108(a)(2), but basic information must be released. The medical records contained in Exhibit D may not be released except as provided by chapter 159 of the Occupations Code. All Texas driver's license numbers, license plate numbers, and VIN numbers must be withheld under section 555.130 of the Government Code. The home addresses, telephone numbers, social security numbers, and family member information of all peace officers named in the submitted documents must be withheld under section 552.117(2). Exhibits D and G must be released, but victim and witness identifiers must be withheld under 552.101 and *Ellen*. All victim identifiers must be withheld under section 552.101 and common law privacy.

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.

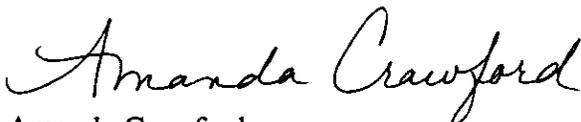
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,



Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/nc

Ref: ID# 136729

Encl. Submitted documents

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