



August 31, 2000

Mr. John Steiner
Division Chief
Law Department
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR2000-3381

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138640.

The City of Austin (the “city”) received a request for all records regarding a specific incident in which a woman was attacked in a parking lot, as well as information pertaining to other police calls made to the location of the incident since the incident occurred. You state that the city intends to release the front page information from the offense report that pertains to this incident and the requested police calls made since the incident occurred. You claim that the requested information is excepted from disclosure under sections 552.101,¹ 552.103, and 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.²

Section 552.108(a)(1) excepts from disclosure “[i]nformation 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[.]” Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a), (b), .301(e); *see also Ex parte Pruitt*, 551

¹Although you do not raise this specific Government Code provision, you raise an argument that is sufficient to invoke section 552.101.

²The responsive information consists of the offense report regarding this incident, and a tape recording and transcript of the police transmissions made in responding to this incident.

S.W.2d 706 (Tex. 1977). You explain that the submitted information pertains to a pending criminal investigation. Based on this representation, we find that release of the submitted information would interfere with an ongoing criminal case, and therefore, the submitted information is subject to section 552.108(a)(1). Therefore, the city may withhold most of the submitted information with the exception of the front page information which you state the city generally intends to release. *See generally* Gov't Code § 552.108(c); *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). Although section 552.108(a)(1) authorizes the city to withhold the non-front page information from disclosure, you may choose to release all or part of the submitted information that is not otherwise confidential by law. *See* Gov't Code § 552.007.

Section 552.101 protects information considered confidential under the common law right to privacy. Information is protected by the common law right to privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Moreover, under section 552.101 in conjunction with common law privacy, information may be withheld from public disclosure in special circumstances. *See* Open Records Decision No. 169 (1977). We consider "special circumstances" to refer to a very narrow set of situations in which release of the information would likely cause someone to face "an imminent threat of physical danger." Open Records Decision No. 169 at 6 (1997). Note that special circumstances does not include "a generalized and speculative fear of harassment or retribution." Open Records No. 169 at 6 (1977).

You explain that release of the victim's name and other identifying information would jeopardize the victim's safety. Not only did the suspect attack the victim, but he threatened to kill her. You further state that the suspect remains at large and release of the victim's identity would enable the suspect to locate the victim and do more harm. Based on these representations, we find that the city has shown that special circumstances exist to justify withholding the victim's identity under section 552.101. Therefore, pursuant to section 552.101, the city must withhold information that identifies the victim from the front page information that the city must otherwise release under section 552.108(c).³

However, we note that the documents indicate that the requestor in this instance may be the attorney representing the victim. Under section 552.023 of the Government Code,

³Because sections 552.101 and 552.108 are dispositive of this matter, we do not address your argument regarding section 552.103 except to note that, like section 552.108, section 552.103 does not except front page offense report information. *See* Open Records Decision No. 597 (1991).

[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.

Gov't Code § 552.023. Therefore, if the requestor here is the victim's authorized representative, then she has a special right of access to the victim's identifying information, and the city must release this information to this particular requestor only.

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.

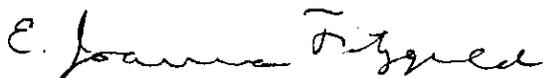
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge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



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\er

Ref: ID# 138640

Encl: Submitted documents

cc: Ms. Diane S. Jacobs
Ivy, Crews, & Elliott, P.C.
8140 North Mopac, Bldg. 2-150
Austin, Texas 78759-8860
(w/o enclosures)