



February 20, 2002

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
Post Office Box 469002
Garland, Texas 75046-9002

OR2002-0815

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158771.

The Garland Police Department (the "department") received a request for the "full report" involving allegations of aggravated sexual assault and evading arrest specific to a certain date. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the submitted information appears to comprise completed department reports. Section 552.022 of the Government Code makes certain information expressly public, and therefore not excepted from required public disclosure unless made expressly confidential under other law. See Gov't Code § 552.022(a). One such category of expressly public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108[.]" Id. § 552.022(a)(1). The submitted information must therefore be released under section 552.022, unless it is excepted from disclosure under section 552.108 or is expressly made confidential under other law.

Section 552.101 of the Government Code excepts from disclosure information that is "considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Included within this exception is information protected under the common law right to privacy. The doctrine of common-law privacy protects information if: (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in it. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). We have previously concluded that a sexual assault victim has a common-

law privacy interest that prevents disclosure of information that would identify her. See Open Records Decision No. 393 (1982); cf. *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 a legitimate interest in such information).

In Open Records Decision No. 393 (1983), this office concluded that because the identifying information of a sexual assault victim was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); see *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 a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld), Open Records Decision No. 339 (1982).

In the case of the Report No. 2001RO33506, it appears that the requestor knows the identity of the alleged victim.¹ We believe that, in this instance, withholding only identifying information from the requestor would not preserve the victim's common law right to privacy. We conclude, therefore, that the department must withhold from disclosure Report No. 2001RO33506 in its entirety pursuant to section 552.101. As for the incident Report No. 2001RO33512, we have marked portions of the information that tend to identify the sexual assault victim and are thus confidential under section 552.101 in conjunction with the common law right of privacy.

For the remaining highlighted information contained in Report No. 2001RO33512, you claim exception from disclosure under section 552.108. Section 552.108(a) excepts from 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.” Generally, a governmental body claiming 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)(1), (b)(1), .301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested offense report relates to a criminal matter pending prosecution. Based upon this representation, we conclude that the release of the offense report 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 cases).

¹Because the report contains conflicting statements regarding the victim's marital status, we are unable to determine whether the victim is a child for purposes of determining whether the report is subject to section 261.201 of the Family Code. See Fam. Code § 101.003 (defining “child”).

We note, however, that information normally found on the front page of an offense report is generally considered public. *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). Thus, you must release the types of information in Report No. 2001RO33512 that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(1) authorizes you to withhold the remaining Report No. 2001RO33512 information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

Finally, Report No. 2001RO33512 contains license plate numbers. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

The department must withhold the Texas license plate number we have marked under section 552.130.

In summary, the department must withhold from disclosure Report No. 2001RO33506 in its entirety, and the marked portions of Report No. 2001RO33512, under section 552.101 of the Government Code in conjunction with the common law right of privacy. The department may withhold the highlighted information in Report No. 2001RO33512 under section 552.108. The department must withhold the marked license plate number in Report No. 2001RO33512 under section 552.130. The remaining information must be released to the requestor.

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).

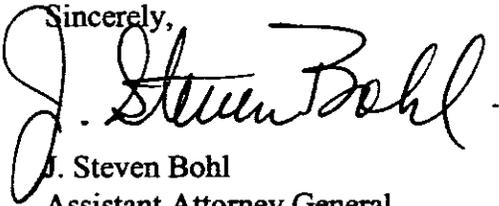
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/sdk

Ref: ID# 158771

Enc: Submitted documents

c: Mr. Alcides J. Ruiz
711 E. Celeste Drive
Garland, Texas 75040
(w/o enclosures)