



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

February 10, 2003

Mr. Robert R. Ray  
Assistant City Attorney  
City of Longview  
P.O. Box 1952  
Longview, Texas 75606-1952

OR2003-0894

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176299.

The City of Longview (the "city") received a request for a specified incident relating to an investigation of an alleged attempted sexual assault. You contend that portions of the requested information are excepted from public disclosure pursuant to sections 552.101, 552.103, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 incident has been referred to the Gregg County District Attorney for prosecution, though no charges have been filed against the suspect at this time. 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). Thus, you may generally withhold the submitted information under section 552.108(a)(1).

We note, however, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Generally, the identity of a complainant must be released as basic information. However, information tending to identify victims of serious sexual offenses is protected from public disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 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 a legitimate interest in such information). Accordingly, the city must withhold the sexual assault victim's identifying information, but the remaining basic information, including a detailed description of the offense, must be released. *See 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); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information, including detailed description of offense). We note, however, that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007. Because we are able to make a determination under sections 552.101 and 552.108, we need not address your remaining arguments against disclosure.<sup>1</sup>

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

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<sup>1</sup>We note that basic information in an offense report generally may not be withheld under section 552.103. *See* Open Records Decision No. 597 (1991).

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,



Gregory Simpson  
Assistant Attorney General  
Open Records Division

GS/sdk

Ref: ID# 176299

Enc: Submitted documents

c: Mr. John Lynch  
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(w/o enclosures)