



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 17, 2003

Mr. Brad Norton
Assistant City Attorney
City of Austin - Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2003-2636

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179942.

The City of Austin (the "City") received a request for "[a]n incident report showing the name of a person who barricade [sic] themselves inside a home" at a specified address, date, and time. You assert the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have reviewed the information you submitted and we have considered the exceptions you claim.

Initially, we note our receipt of a letter from the law firm of Graves, Dougherty, Hearon & Moody (the "firm"), which represents the requestor's employer - the Austin-American Statesman (the "Statesman"). On behalf of its client, the firm makes specific arguments for either the release of the entire incident report, or at a minimum, a redacted version of the report that reveals the name of the person involved in the incident at issue. The firm emphasizes the Statesman primarily seeks the name of the person who barricaded himself inside a home.

Next, we address the City's assertion of section 552.108, which states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime."

Gov't Code § 552.108(a)(1). You inform us the Austin Police Department maintains the submitted information and these records contain information that pertains to a pending investigation. Therefore, we believe the release of this information "would interfere with the detection, investigation, or prosecution of crime." *Id.* Thus, the City may withhold the submitted information based on section 552.108 of the Government Code.

However, section 552.108 does not except from disclosure 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 Company 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).

Generally, basic information includes a detailed description of the offense and the offense committed. *Houston Chronicle*, 531 S.W.2d at 187. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Common-law privacy protects information when (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Indus. Found.*, 540 S.W.2d at 683. Based on our review of the submitted information, we agree with the City that the basic information includes such highly intimate or embarrassing facts as to warrant protection under common-law privacy. In addition, the public does not have a legitimate interest in the information. Therefore, the City must withhold the information we have marked from its detailed description of the offense and the offense committed under section 552.101 of the Government Code and common-law privacy. However, we do not believe common-law privacy protects the identity of the arrestee in this instance.

In summary, the City may withhold the submitted information based on section 552.108(a)(1) of the Government Code. The City must release basic information under section 552.108(c) of the Government Code, including the name of the arrestee. We have marked the submitted incident report with the type of information the City must withhold under section 552.101 of the Government Code 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 Dep't of Pub. 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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 179942

Enc: Submitted documents

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