



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 1, 2003

Mr. Kuruvilla Oommen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2003-4500

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183581.

The Houston Police Department (the "department") received a written request for two specified offense reports. You contend that the information you submitted to this office as being responsive to the request is excepted from required disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code.

Because your section 552.108 claim is the more inclusive, we will address it first. You contend that both of the requested offense reports are excepted from public disclosure pursuant to section 552.108(a)(1), which excepts from required public 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." Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because the release of such information presumptively 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). You explain that both the requested offense reports pertain to criminal investigations that are "inactive" but that those investigations "may be reactivated once additional leads are developed." You further inform us that the statutes of limitations on the alleged crimes have not yet run. We therefore conclude that the department may withhold most of information contained in the two submitted offense reports pursuant to section 552.108(a)(1) of the Government Code.¹

¹Because we resolve this aspect of your request under section 552.108, we need not address the applicability of section 552.130 of the Government Code.

Section 552.108 does not, however, except from required public 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*. See also Open Records Decision No. 127 (1976) (summarizing types of information held to be public in *Houston Chronicle*). Accordingly, the department must release these types of information from both offense reports in accordance with *Houston Chronicle*, with the following exception.

Although the identity of a complainant is generally considered “basic information,” we note that case number 004682502B pertains to an alleged sexual assault. Section 552.101 of the Government Code excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information protected by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Id.* at 683-85. Clearly, an instance of sexual assault implicates the privacy interests of the assault victim. See *id.* at 683; Open Records Decision No. 339 (1982) (identity of sexual assault victim protected by common-law privacy). We therefore conclude that the department must withhold all information tending to identify the victim of the alleged sexual assault in case number 004682502B.

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/RWP/sdk

Ref: ID# 183581

Enc: Submitted documents

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(w/o enclosures)