



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 22, 2004

Mr. Mark G. Mann  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR2004-3291

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200015.

The Garland Police Department (the "department") received a request for offense report number 2004R003390. You claim that the requested offense report is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. You contend that offense report number 2004R003390 is confidential pursuant to section 261.201(a) of the Family Code, which generally makes confidential reports of alleged or suspected child abuse or neglect and information used or developed in investigations made under chapter 261 of the Family Code. *See* Fam. Code § 261.201. Section 261.201 applies only to investigations of abuse or neglect of individuals under the age of eighteen. *See* Fam. Code § 101.003(a) (defining "child" for purposes of chapter 261 as person under 18 years). Here, the submitted offense report indicates that the victim was over eighteen years of age at the time of the offense. Accordingly, the department may not withhold the submitted information under section 552.101 in conjunction with section 261.201 of the Family Code.

We next address your claim under section 552.108 of the Government Code for the information you have highlighted in yellow in the submitted documents. 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 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 information you seek to withhold under section 552.108 relates to a pending criminal investigation. Based on your representations and our review, we determine that the release of the information you have marked 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). Accordingly, we agree that section 552.108(a)(1) is applicable to this information.

We note, however that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information includes the identification and description of the complainant. See *Houston Chronicle*, 531 S.W.2d at 187; Open Records Decision No. 127 (1976). However, as offense report number 2004R003390 pertains to a sexual assault, certain basic information from the report is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.

Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication 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, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Information that tends to identify a victim of sexual assault is protected under common-law privacy. See Open Records Decision No. 339 (1982); *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). Thus, the department must withhold information identifying the individual who was assaulted pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. All other basic information must be released to the requestor. The department may withhold the remainder of the information at issue pursuant to section 552.108(a)(1) of the Government Code.<sup>1</sup>

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<sup>1</sup> Based on this finding, we do not reach your claim under section 552.130 of the Government Code.

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,

A handwritten signature in black ink, appearing to read "D. Saldivar", with a long horizontal flourish extending to the right.

David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 200015

Enc: Submitted documents

c: Ms. Essie McDaniel  
Stoneleigh Place Apartments  
2261 West Buckingham Road  
Garland, Texas 75042  
(w/o enclosures)